United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, MONDAY, JANUARY 30, 2006 No. 8

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 31, 2006, at noon.

Senate

MONDAY, JANUARY 30, 2006

The Senate met at 10 a.m. and was called to order by the Honorable ROBERT F. BENNETT, a Senator from the State of Utah.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, to whom a thousand years are but a moment, by Your mercy we have received the gift of another day. Help us to maximize today's possibilities with humble and grateful hearts. Forgive our past faults and failures and empower us to press forward with faith toward a productive tomorrow.

Bless our lawmakers and the members of their staffs. May the words of their lips and the meditations of their hearts bring glory to You. Let not life's weariness or this world's confusion rob them of their trust in You.

Take control of our lives. Make us large of spirit, generous, and merciful. Use us to lift the fallen and remind us to bless even those who curse us. Show us the straight path and a clear way over the difficulties of today and tomorrow.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROBERT F. BENNETT led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 30, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT F. BENNETT, a Senator from the State of Utah, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BENNETT thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senate is available for morning business.

The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, last Thursday I submitted a statement expressing my concerns with the nomination of Judge Samuel Alito to the United States Supreme Court.

I am here today to reiterate these concerns as we move toward a final vote on this nomination.

There is no higher legal body in the United States than the Supreme Court. It is the final authority on the meaning of laws and the Constitution.

A Supreme Court Justice could serve for the life of the nominee, so the consequences of confirming a Supreme Court Justice can span decades.

The confirmation of a Supreme Court Justice is one of the most important votes a Senator will take.

With that in mind, after careful consideration, I have concluded I cannot support Judge Alito's nomination to the U.S. Supreme Court.

My first step in evaluating a nominee is to consider whether he or she is appropriately qualified and capable of handling the responsibilities of a Justice.

Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. However, there are additional factors in considering a judicial nominee.

One such factor is the judicial philosophy of the nominee. Many of my colleagues argue this should have no part in the Senate's deliberations.

However, if judicial philosophy helps determine who the President chooses, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee.

This information is critical to retain the balance of power that the Framers of our Constitution envisioned.

In addition to the individual's judicial philosophy, we must also consider the cumulative effect that approving a nominee will have on the Supreme Court.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court.

The Republican stamp on the current Court is undeniable, and clearly the prospects of the Court becoming more moderate in the near future are unlikely.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination.

I have come away from this review with a number of concerns.

First, Judge Alito did not provide complete answers on many important topics the way now Chief Justice Roberts did during his nomination hearing. These included many critical issues such as: Is Roe settled law? What are the limits of the executive branch's power?

Second, Judge Alito failed to distance himself from the radical views he expressed in his earlier writings on the supremacy of executive power.

Third, Judge Alito's record includes troubling decisions on vital issues such as search and seizure, reproductive rights, the power of Congress, civil rights, and affirmative action.

Because of these facts, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county, such as:

Are there limits on the power of the presidency?

Can the Congress regulate the activities of the states?

How expansive is the right to privacy?

What deference should be given to legislative acts of the Congress?

How the Court addresses these questions goes to the heart of what we stand for as a country, which is why this nomination is so important.

While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

The assistant legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10 to 11 shall be under the control of the Democratic side.

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, today at 4:30, Members of this body will be casting an extremely important vote, the implications of which are going to be felt not only in the next several months but for a great number of years, not only for this generation but for the next generation and the following. It is on a nomination for the Supreme Court of the United States and whether we are going to move ahead and have a final vote tomorrow.

There is nothing more important than the votes we cast on nominations to the Supreme Court, except sending young Americans to war. The implications of this vote are far reaching. As one who has followed the courts of this country as they moved us to a fairer and more just nation, this nomination has enormous consequences and importance. I doubt if we will cast another such vote, unless it would be for a Supreme Court nominee, any time in the near future.

I remember the beginning of the great march towards progress this Nation made with the Fifth Circuit in the 1950s, the great heroes, Judge Wisdom, Judge Tuttle, Judge Johnson, and many others who awakened the Nation to its greatness in terms of having America be America by knocking down walls of discrimination and prejudice. Our Founding Fathers didn't get it right on that as we know. They effectively wrote slavery into the Constitution. We fought a Civil War that didn't resolve it or solve it. Though, obviously, with President Lincoln and other extraordinary leaders, we began to move the process forward to knock down the walls of discrimination.

It was really as a result of the extraordinary leadership of Dr. King, his allies and associates in the late 1950s, that America began to think about what this country was all about, recognizing the stains of discrimination. We had the beginning of the movement to knock down the walls of discrimination in the Public Accommodation Act of 1964, the Voting Rights Act of 1965, the Civil Rights Act of 1967, housing in 1968, title XIV in 1973. In 1965, we knocked down the walls of discrimination in our immigration laws, the national origin quota system. The Asian-Pacific triangle discriminated against Asians. The national origin quota system discriminated against groups of countries.

We have made enormous progress, not that laws themselves are going to solve these problems. We had laws that were passed, supported by Democrats and Republicans during this time, and we became a fairer and more just nation. Still there are important areas we have to move toward to complete the march. The stains of discrimination are still out there, not nearly as obvious as they were in the earlier part of the last century, but they are still out there. They are evident. All of us at one time or another still see them. It is not limited to a region of the Nation. It exists in my part of the country as well.

The question is, Are we moving forward to knock down the walls of discrimination? That has always been a pretty basic test for me in terms of reaching a judgment on the Supreme Court.

I remember the case of Tennessee v. Lane that was decided not long ago. It involved a woman in a wheelchair, a single mom with two children, trained as a court reporter. The State was Tennessee. About 60 percent of all the courtrooms in Tennessee for some reason are on the second floor. The question involved the Americans with Disabilities Act. I welcomed the opportunity to work closely with my colleague from Iowa, Senator HARKIN, on that program. By the time we came to the floor, we had bipartisan support for that legislation. President Bush 1 indicated it was the piece of legislation of which he was most proud. It wasn't always easy in terms of dealing with the disabled.

I can remember when we had 4 million children who were kept in closets rather than being able to go to school. We had bipartisanship on the IDEA, the Individuals with Disabilities Education Act, and we made enormous progress during that time.

Then we had Tennessee v. Lane. The question was whether that courthouse was going to make reasonable accommodations to let that single mother, who was trained as a court reporter, avoid being carried up a flight of stairs, avoid being carried into the ladies room, avoid other humiliating circumstances because of her disability, was that courthouse going to have to make those reasonable accommodations.

Four Justices on the Supreme Court said no, no, we don't have to make those accommodations. But five said yes. Sandra Day O'Connor said yes on that and they made those accommodations. That mother was able to gain entrance into the courthouse and has had a successful career. She appeared before our committee with tears in her eyes. If that decision had gone 5 to 4 the other way, all 50 States would have had to have passed disability rights acts—not the Americans With Disability Act, but a Massachusetts disabilities act, or Connecticut, or Rhode Island. But we had the Americans With Disabilities Act, so 42 million fellow citizens with physical and mental disabilities are now part of the American family today. Just as we have knocked down the walls of discrimination on race, religion, ethnicity, and gender, we have done so with disability. We have also made some progress in terms of gay and lesbian issues as well.

We have made this march toward progress. The question is whether we

are going to have a justice who believes in that march of progress, or whether we are going to have somebody who is going to be a roadblock in that march toward progress. I express my opposition to Judge Alito because I think he is the wrong judge at the wrong time on the wrong court. I don't believe he is going to be part of the whole movement and march toward progress in this country. It is a delicate balance. We have seen at times in American history where Executives have led the way in making this a fairer country and where Congress has led the way and, certainly, we have seen that with Executive power in terms of the adoption of the Medicare Programs and Medicaid. We had Presidential leadership for a while in the early sixties, and finally we passed those. As a result, we are a fairer country. Ask our elderly people if we didn't have the Medicare or the Social Security programs where we would be as a nation. That is the issue.

I accepted the challenge of Judge Alito, who said, let's read my cases. I am reminded of the fact that to understand a nominee, one has to read their dissenting opinions. Ruth Bader Ginsburg and Robert Bork agreed 91 percent of the time. Isn't that extraordinary about two individuals with dramatically different judicial philosophies? They agreed 91 percent of the time. Where you found their differences were in their dissents.

That is where I looked with regard to this nominee. That is why I came to the conclusion this nominee was not going to be friendly to the average worker, friendly on women's rights, friendly on the issues of race, friendly on the issues of the environment, and would no doubt be willing to accede to a more expansive Executive power.

I remember the time when the President announced the nomination of Judge Alito. It was in the early morning. I happened to be up in Massachusetts and I knew the announcement would be made. I didn't know Judge Alito. Certainly the representation was that there is a wide open kind of net that has been spread out across the country to try to find the very best in our Nation who would be a good nominee. I have voted for seven Republican nominees for the Supreme Court. We have had a great many of those nominees who were virtually unanimous in this body—Democrats and Republicans voting together for nominees—and that is what I think all of us were hoping for. We had seen the fiasco that had taken place with Harriet Miers. We saw groups in this country that were prepared to exercise a veto. We have seen groups in our Nation that were prepared to exercise a litmus test. We have seen groups that have said absolutely, no, we are not going to have Harriet Miers. These are the same groups that indicated for so long that nominees are entitled to a vote up or down.

We ought to be able to look at a nominee's judicial philosophy and all the rest. All of those issues went right out the window when Harriet Miers was nominated. The reason was because Harriet Miers didn't pass a litmus test. Now we have Judge Alito. Before the announcement ended, we see this extraordinary wave of favorability that has come over in terms of support for this nominee. I wonder how people could be so opposed to Harriet Miers and, as soon as Judge Alito was announced, how they could be so overwhelmingly for him. What did they know? Who knew?

One of the things I think of is what our Founding Fathers wanted. What did the Constitution say on this issue? The Founding Fathers, in debating the Constitution, considered the issue of appointment of judges four different times. On three occasions they gave all the authority to this body here, the Senate, to recommend and appoint. The last important decision at the Constitutional Convention—10 days before the end—was to share the power, with the Executive having the power to appoint and the Senate having the power to give advice and consent. You cannot read the debates, which I have read, and not understand that it was a shared responsibility—not this idea that the Senate is supposed to be a rubberstamp. I know it suits their interests, but our Founding Fathers wanted the shared responsibility. Remember the checks and balances, the essential aspect of the Constitution of the United States? When they give authority and power in one place, they give authority and power to the other—the Commander in Chief, Executive, making of war; with the Congress, the power of the purse, and the rest of the issues we all are familiar with.

This is a shared responsibility, and we in this Senate have a very important constitutional obligation to review the recommendation. The real question for us now when we have a nominee is to find out—not for ourselves, but as instruments for the American people—what the beliefs of this nominee are; what are the real beliefs are of the nominee for the Supreme Court of the United States; do we have the assurances that this individual is the best of the best. We have seen that. President Reagan gave us Sandra Day O'Connor, who was the best of the best. The list went on. We have had extraordinary jurists in the past.

We approached this to try to find out these things on the Judiciary Committee. We have a pretty good sense that the executive branch knows the philosophy of this nominee. They have made the recommendation and obviously they have inquired of this nominee, so they know where he is.

I was absolutely startled this morning when I picked up the New York Times and saw in Mr. Kirkpatrick's article on the front page exactly how this nominee was selected, who selected him, and what the process was. All during this period of time, that was something those of us on Judiciary Committee had no mind of. Maybe our friends on the other side knew about it. But this is on the front page of the New York Times: Paving the Way For Alito Began In Reagan Era.

It goes on extensively, continuing on page A18. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IN ALITO, G.O.P. REAPS HARVEST PLANTED IN '82

(By David D. Kirkpatrick)

Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists and legal strategists met to prepare a battle plan to ensure any vacancies were filled by likeminded jurists.

The team recruited conservative lawyers to study the records of 18 potential nominees including Judges John G. Roberts Jr. and Samuel A. Alito Jr.—and trained more than three dozen lawyers across the country to respond to news reports on the president's eventual pick.

''We boxed them in,'' one lawyer present during the strategy meetings said with pride in an interview over the weekend. This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

Now, on the eve of what is expected to be the Senate confirmation of Judge Alito to the Supreme Court, coming four months after Chief Justice Roberts was installed, those planners stand on the brink of a watershed for the conservative movement.

In 1982, the year after Mr. Alito first joined the Reagan administration, that movement was little more than the handful of legal scholars who gathered at Yale for the first meeting of the Federalist Society, a newly formed conservative legal group.

Judge Alito's ascent to join Chief Justice Roberts on the court ''would have been beyond our best expectations,'' said Spencer Abraham, one of the society's founders, a former Secretary of Energy under President Bush and now the chairman of the Committee for Justice, one of many conservative organizations set up to support judicial nominees.

He added, ''I don't think we would have put a lot of money on it in a friendly wager.''

Judge Alito's confirmation is also the culmination of a disciplined campaign begun by the Reagan administration to seed the lower federal judiciary with like-minded jurists who could reorient the federal courts toward a view of the Constitution much closer to its 18th-century authors' intent, including a much less expansive view of its application to individual rights and federal power. It was a philosophy promulgated by Edwin Meese III, attorney general in the Reagan administration, that became the gospel of the Federalist Society and the nascent conservative legal movement.

Both Mr. Roberts and Mr. Alito were among the cadre of young conservative lawyers attracted to the Reagan administration's Justice Department. And both advanced to the pool of promising young jurists whom strategists like C. Boyden Gray, White House counsel in the first Bush administration and an adviser to the current White House, sought to place throughout the federal judiciary to groom for the highest court.

''It is a Reagan personnel officer's dream come true,'' said Douglas W. Kmiec, a law

professor at Pepperdine University who worked with Mr. Alito and Mr. Roberts in the Reagan administration. ''It is a graduation. These individuals have been in study and preparation for these roles all their professional lives.''

As each progressed in legal stature, others were laying the infrastructure of the movement. After the 1987 defeat of the Supreme Court nomination of Judge Robert H. Bork conservatives vowed to build a counterweight to the liberal forces that had mobilized to stop him.

With grants from major conservative donors like the John M. Olin Foundation, the Federalist Society functioned as a kind of shadow conservative bar association, planting chapters in law schools around the country that served as a pipeline to prestigious judicial clerkships.

During their narrow and politically costly victory in the 1991 confirmation of Justice Clarence Thomas, the Federalist Society lawyers forged new ties with the increasingly sophisticated network of grass-roots conservative Christian groups like Focus on the Family in Colorado Springs and the American Family Association in Tupelo, Miss. Many conservative Christian pastors and broadcasters had railed for decades against Supreme Court decisions that outlawed school prayer and endorsed abortion rights.

During the Clinton administration, Federalist Society members and allies had come to dominate the membership and staff of the Judiciary Committee, which turned back many of the administration's nominees. ''There was a Republican majority of the Senate, and it tempered the nature of the nominations being made,'' said Mr. Abraham, the Federalist Society founder who was a senator on the Judiciary Committee at the time.

By 2000, the decades of organizing and battles had fueled a deep demand in the Republican base for change on the court. Mr. Bush tapped into that demand by promising to name jurists in the mold of conservative Justices Thomas and Scalia.

When Mr. Bush named Harriet E. Miers, the White House counsel, as the successor to Justice O'Connor, he faced a revolt from his conservative base, which complained about her dearth of qualifications and ideological bona fides.

''It was a striking example of the grass roots having strong opinions that ran counter to the party leaders about what was attainable,'' said Stephen G. Calabresi, a law professor at Northwestern University and another founding member of the Federalist Society.

But in October, when President Bush withdrew Ms. Miers's nomination and named Judge Alito, the same network quickly mobilized behind him.

Conservatives had begun planning for a nomination fight as long ago as that February meeting, which was led by Leonard A. Leo, executive vice president of the Federalist Society and informal adviser to the White House, Mr. Meese and Mr. Gray.

They laid out a two-part strategy to roll out behind whomever the president picked, people present said. The plan: first, extol the nonpartisan legal credentials of the nominee, steering the debate away from the nominee's possible influence over hot-button issues. Second, attack the liberal groups they expected to oppose any Bush nominee.

The team worked through a newly formed group, the Judicial Confirmation Network, to coordinate grass-roots pressure on Democratic senators from conservative states. And they stayed in constant contact with scores of conservative groups around the country to brief them about potential nominees and to make sure they all stuck to the same message. They fine-tuned their strategy for Judge Alito when he was nominated in October by recruiting Italian-American groups to protest the use of the nickname ''Scalito,'' which would have linked him to the conservative Justice Antonin Scalia.

In November, some Democrats believed they had a chance to defeat the nomination after the disclosure of a 1985 memorandum Judge Alito wrote in the Reagan administration about his conservative legal views on abortion, affirmative action and other subjects.

''It was a done deal,'' one of the Democratic staff members of the Senate Judiciary Committee said, speaking on the condition of anonymity because the staff is forbidden to talk publicly about internal meetings. ''This was the most evidence we have ever had about a Supreme Court nominee's true beliefs.''

Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum, which described views that were typical in their circles, people involved in the effort said. But executives at Creative Response Concepts, the team's public relations firm, quickly convinced them it was ''a big deal'' that could become the centerpiece of the Democrats' attacks, one of the people said.

''The call came in right away,'' said Jay Sekulow, chief counsel of the American Center for Law and Justice and another lawyer on the Alito team.

Responding to Mr. Alito's 1985 statement that he disagreed strongly with the abortion-rights precedents, for example, ''The answer was, 'Of course he was opposed to abortion,' '' Mr. Sekulow said. ''He worked for the Reagan administration, he was a lawyer representing a client, and it may well have reflected his personal beliefs. But look what he has done as judge.''

His supporters deluged news organizations with phone calls, press releases and lawyers to interview, all noting that on the United States Court of Appeals for the Third Circuit, Judge Alito had voted to uphold and to strike down abortion restrictions.

Democrats contended that those arguments were irrelevant because on the lower court Judge Alito was bound by Supreme Court precedent, whereas as a justice he could vote to overturn any precedents with which he disagreed.

By last week it was clear that the judge had enough votes to win confirmation. And the last gasp of resistance came in a Democratic caucus meeting on Wednesday when Senator Edward M. Kennedy, joined by Senator John Kerry, both of Massachusetts, unsuccessfully tried to persuade the party to organize a filibuster.

No one defended Judge Alito or argued that he did not warrant opposition, Mr. Kennedy said in an interview. Instead, opponents of the filibuster argued about the political cost of being accused of obstructionism by conservatives.

Still, on the brink of this victory, some in the conservative movement say the battle over the court has just begun. Justice O'Connor was the swing vote on many issues, but replacing her with a more dependable conservative would bring that faction of the court at most to four justices, not five, and thus not enough to truly reshape the court or overturn precedents like those upholding abortion rights.

''It has been a long time coming,'' Judge Bork said, ''but more needs to be done.''

Mr. KENNEDY. Mr. President, America is listening to the President. He said: We are going to get the very best nominee we possibly can. That is one side of the story. Most of us certainly believed it. Well, this is the story. This may be accurate and it may not be. I think it is very difficult to read this story and not certainly find a very powerful ring of truth in it:

Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists, and legal strategists met to prepare a battle plan to ensure any vacancies were filled by like-minded jurists.

So the right wing had a plan. They knew what the thinking of the nominee was. The article continues:

The team recruited conservative lawyers to study the records of 18 potential nominees—including Judges John G. Roberts and Samuel A. Alito—and trained more than three dozen lawyers across the country to respond to news reports on the President's eventual pick.

So members of the right wing are going to make the pick and we see around the country where dozens of lawyers are going to respond to the news reports. It continues:

''We boxed them in'' . . .

Boxed whom in? They boxed in the American people. That is what they are saying proudly—''we boxed them in,'' one lawyer present during the strategy meetings said with pride in an interview over the weekend.

Boxed whom in? This is a nomination for the Supreme Court of the United States. This is supposed to represent all of the people, all Americans. No, no, they boxed them in, a lawyer present at the strategy meeting said with pride.

This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

There it is. They can hardly wait. Although I was surprised that—and this would be my 23rd Supreme Court nominee—the nominee was up in the Capitol last week thanking Senators for their support and receiving congratulations prior to the time we even vote on him.

It has been debated for less than a week on the floor of the Senate. Twenty-five Senators from our side have spoken. Only half of our caucus had a chance to speak. They will not speak now if we cut it off. They have not had a chance to talk. Again, the article says:

. . . The team had told its allies not to exult publicly until the confirmation vote was cast.

Then they will pop the champagne and say we pulled one over on you. And it continues:

They laid out a two-part strategy to roll out behind whomever the President picked, people present said. The plan: first extol the nonpartisan legal credentials of the nominee . . .

They don't even know who the nominee is going to be yet, but they have the plan to extol the nonpartisan legal credentials.

. . . steering the debate away from the nominee's possible influence over hot-button issues. Second, attack the liberal groups they expect to oppose any Bush nominee.

There it is, that is the strategy. It is not that we are going to nominate the best possible nominee and that we are going to work with Republicans and Democrats alike to make sure the American people understand how this nominee is going to protect your constitutional rights and liberties. That is what we thought. That is what has been done at other times—not every time, but most of the time. That is what the American people expect and what they are entitled to.

But, oh, no, this group is already saying we know how we are going to handle this, whoever it is. We are going to exalt the assets of this nominee. The other thing is we are going to launch our attacks on other people before the nominee is even out there. This is the confirmation process for the Supreme Court of the United States for a nominee who is going to make the decisions on your rights and liberties for the next 30, 40 years? Attack them as soon as the nomination is out there. Exalt the nominee's professional credentials. We don't know who it is, but you better get them out there doing it, and we have our network wired around the country to make sure they are going to come out right on it. This for the Supreme Court of the United States? This is what we are finding out.

It continues:

Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum.

This is the 1985 memorandum of Judge Alito that he used in an application for a job with the Justice Department. He was 35 years old. He had argued 15 cases before the Supreme Court. He had a number of statements in there that were provocative. I will come back to that.

This memorandum was provocative because it indicated that he was against a woman's right to choose, he was against reapportionment, which, of course, has had enormous importance in terms of ensuring people's right to vote and have that vote counted in a meaningful way. There was some concern whether this was going to have any impact. This was his real, true view about the Constitution. This was a document which showed his real view about it, which would have been helpful to the American people to at least understand what Judge Alito's views are.

Those lawyers supporting Alito said we will shrug off the memo:

. . . which described views which were typical in their circles, people involved in the effort said. But the Conservative Response Concepts, the team's public relations firm, quickly convinced them it was ''a big deal'' that could become the centerpiece of the Democrats' attacks, one of the people said.

Creative Response Concepts. Who is this Creative Response Concepts? The Creative Response Concepts, if you look them up on the Web, right above the Alito confirmation hearings is the Swift Boat Veterans for Truth—Swift Boat Veterans for Truth, the ones who made the distortions and misrepresentations about my colleague and friend, JOHN KERRY, and his war record. They distorted and misrepresented it. They are now advertising the Alito confirmation hearings. They say, Let us get in it, and into it they go.

The American people are entitled to listen to those who believe in the nominee, and to listen to those on the other side. No, we are getting our message right through a PR firm, Creative Response Concepts. We are getting our truth right through them. The American people are going to understand his views of constitutional rights and liberties from Creative Response Concepts. When we finish doing the Swift Boat Veterans for Truth, we have the Alito nomination right here. This is what the American people are entitled to?

The team's public relations firm quickly convinced them it was ''a big deal'' that could become the centerpiece of the Democrats' attack, one of the people said.

The article continues.

This has been a difficult process to make a judgment and be fair to the nominee and also carry forward our responsibilities. But when we have the kind of action on the outside and the failure to be responsive on the inside, in terms of his response to questions, this is a disservice to the American people.

This has been a longstanding campaign. It has been a stealth campaign. I daresay that is not what the Founding Fathers intended, that is not what they expected, and the American people deserve a great deal better.

I hope people will have the chance to read the whole article. I am not going to go through it now. I have given the essence of it. It is very clear how this nominee was selected, why he was selected, and how that campaign for him was conducted.

As the American people are trying to make a judgment on this through their elected representatives today and tomorrow, all we are asking for is an opportunity to have the kind of full discussion and full debate that we ought to and that Members of the Senate who have not had a chance to speak have an opportunity. It is not asking too much.

I have been in the Senate when we really had filibusters. The idea that we are here on a Monday and this came to the Senate last Wednesday and the opposition is saying, Oh, well, this is delaying the work of the Senate—what is more important to the Senate than a vote for a Justice of the Supreme Court of the United States? What is more important? This is the issue, this is the time, this is the nominee, and we find out how we have been treated.

This body deserves better, and the American people deserve better. That is what this vote is this afternoon. That is what it is about. Let's really find out. Let's have a chance to go through these cases and this nominee.

We know that the right wing now has its campaign in full gear. Their mission is to cover up the truth. So we do need a full debate to bring out the truth on Judge Alito's record. What is wrong with debate? Are they afraid of what Americans would do if they really heard the full record? That is what the issue is, and that is why people are entitled to the time.

I was in my State for a few hours on Friday. The people of my State were talking to me, in the few hours I was there, about the prescription drug bill that they just cannot navigate. There are 35 different drug plans from which to choose. There are situations where if an individual signs up for a particular program—it is interesting, the plan itself can change the premiums and the formularies, but the person cannot get off that plan. Once they are in it, they are in it. Or if they do get off the plan, they pay an extraordinary penalty to get onto another. The plan can change deductibles and copays. They are very troubled elderly people.

There are heart wrenching stories. People up there care about the cost of their heating oil going right through the roof. People care about that in my State. People are absolutely in disbelief over how a part of America in New Orleans, Mississippi, and Alabama can be left out and left behind. They are continually pained by the continued loss of sons and daughters from my State and from across the country in the Iraq war with really no end in sight. They are bothered by all of this. They are bothered by the whole issue of lobbying and lobbying corruption.

They are working hard because the middle class is having a more and more difficult time just trying to make ends meet. They are finding that prescription drugs have gone up, heating has gone up, education has gone up, gas has gone up, and their wages have not gone up. It has been 9 years since we increased the minimum wage. Seven times we have increased our own pay, by $30,000, but we cannot afford to increase the minimum wage by a dollar.

Hard-working people are hurting in my State of Massachusetts. Today, they are wondering whether tonight they are going to have food on the table. Now we are asking them to shift their focus to Judge Alito. Judge Alito—how is that going to affect what my family is faced with? It will affect a great deal your children and your children's children's future.

Here are some of the issues Supreme Court decisions affect:

Supreme Court decisions affect the ability of Americans to be safe in their homes from irresponsible search and seizures and other government intrusions. We had those cases come up in the hearings. I will come back and spend some time on them. It is difficult to believe.

Supreme Court decisions affect whether the rights of employees can be

protected in the workplace. If you are a worker, you should be concerned about this nominee.

They affect whether families can obtain needed medical care under health insurance policies. Decisions on health care, whether they are under ERISA, often go to the Supreme Court.

Decisions affect whether people will actually receive retirement benefits they were promised. There was $8 billion lost in the last 5 years; 700 retirement programs lost, $8 billion, where workers actually paid in. Who is going to protect their rights? Is it going to be the powerful companies, powerful interests, special interests, or are we going to have a judge who is going to be looking out for the worker and the worker's interest? It is a legitimate issue.

If you care about your health care, if you care about your retirement, if you care about your conditions of employment, this Supreme Court nominee is where you ought to be focused and where you ought to give your attention.

Supreme Court decisions affect whether people will be free from discrimination, prejudice, and outright bigotry in their daily lives, whether you are going to be told you are not going to get the job because of the color of your skin or because of your gender. There are cases we went through during the Judiciary Committee hearings about Judge Alito being insensitive in those areas. I will come back to them.

Do you hear me? Discrimination, prejudice, outright bigotry in their daily lives. You are going to have to make sure you are going to have a Supreme Court that is going to be fighting for you.

The decisions affect whether Americans' most private medical decisions will be a family matter or subject to government interference. Terri Schiavo is a classic example. We have governmental solutions to these issues, or should these matters be left to the individuals who are closest to any patient—their families, their loved ones, their priests, their ministers, their rabbis? We had a debate on this issue. People can think that is a long way away from them, but there is nobody in this body, nobody in this audience, nobody who is watching who doesn't have a real concern for what is going to happen to their parents, to their loved ones, and whether we are going to be able to deal with that issue or whether the Supreme Court is going to say: Well, we think there are appropriate governmental kinds of roles in this kind of a situation. We certainly saw where a majority of this body legislatively felt the courts ought to become much more involved in that situation. They basically retreated on that position, although some still defended it even in recent days.

The decisions affect whether a person with disabilities will have access to public facilities and programs. I gave the example of Tennessee v. Lane. That is a case that was decided in the last few years about disability rights. Who among us doesn't have a member of their family who has some kind of challenges, either mental health challenges or physical challenges? We have certainly seen it in our family, and when we get the chance to talk about disabilities and disability rights in this body, it is always amazing—not amazing, it is always interesting to me that we give such little attention to those who have mental health challenges and disability needs and we give such little attention and assistance to them.

''Parity'' is the code word, whether we are going to treat people who have mental health issues and those with disabilities the same as those who have physical issues. We still haven't had it. I certainly hope, with the leadership of Senator DOMENICI, certainly myself, Senator HARKIN, and many other Members, that we will have a chance to vote on that issue this year. It is long overdue.

Supreme Court decisions affect whether we will have reasonable environmental laws that keep our air and water clean. Care about the water? Care about the air we have? Does that really make much of a difference to us, Senator? Does it really make much difference to us? Interesting, we have doubled the number of deaths from asthma this year than we had 5 years ago—doubled the deaths for children. I wonder why that is. Do you know where they are? They are all in the States and cities and communities that, by and large, have inhaled the toxins and the dioxins which have come, as a result of changes in the environmental laws, from major plants, carbon-producing plants in this country.

We had laws. I don't know what to tell a mother when she sees her child having that intense reaction. I know, as a father of a chronic asthmatic, they live with it. The idea that people outgrow it—not in our family. We see the constant challenge that it is for any young person as they grow to adulthood. Asthma is increasing, and there is no question about it. It is because of the pollution in the air.

Are we going to have a judge who will recognize what the Congress wanted to do, or someone who is going to say, Oh, no, we have a very powerful company down here that seems to have a reasonable argument—as we saw with Judge Alito; I will come back to that case as well—so, therefore, we are going to find for the company, and we are going to let them continue to discharge pollutants into the lakes. Do we care about the lakes? Do we care about the streams?

Mercury advisories apply to nearly a third of the area of America's lakes and 22 percent of the length of our rivers, and mercury pollution has led 45 states to post fish consumption advisories. Where kids used to go out and fish and enjoy it, that is absolutely denied them for health reasons. With respect to expectant mothers, that is very real.

We in Congress pass laws, the President signs them, they go to the courts for interpretation, and where will this nominee come out? Will he come out for that mother who has a child who has asthma, or that parent seeing the pollution taking place in a lake nearby and whose child has been affected by those kinds of poisons? Where is he going to come out on the issues of discrimination in jobs, issues we have been fighting to eliminate under title VII of our civil rights laws and that still are a problem.

We can go through those cases where this nominee fails to shape up. Let me just say this vote this afternoon will last for 15 or 20 minutes. But the implications of that vote, the implications for your life, your children's lives and your grandchildren's lives, will continue for years to come. We have only one chance to get it right. This is not a piece of legislation where you can go ahead and pass it and then say, oh, well, we got it wrong.

I think with respect to the prescription drug bill we will have to come back and redo it. I think we should. We can come back and redo a prescription drug bill. Americans are entitled to that. Seniors are entitled to it. We got it wrong when, effectively, the conference was hijacked by the drug companies and the HMOs. There were extraordinary payoffs. It was written up in the Washington Post last week about the payoff—it was $46 billion to the HMOs back in 2003, now it is $67 billion.

People who go to the HMOs are 8 percent healthier, and they got a 7-percent inflator, a 15-percent advantage. I thought Republicans used to say the private sector was more efficient; that we can do it more effectively than the Government so we don't need extra help. No, they want all the extras, 15 percent more, so it comes to $46 billion more. You are asking why people in my State are paying higher copays and premiums and all the rest? It is because we have these kinds of payouts.

We can come back and deal with those. People can deal with those in the elections next fall. I understand that. You win or lose and we come back to it, but not on the Supreme Court of the United States. You get one time, one chance, one vote to get it right. There are no second times. That is what all of this is really about in this debate we will have for the course of the day and this afternoon.

As I say, I don't know what is more important that we are going to deal with. I gave examples of the range of different issues that come before the Supreme Court. I doubt if there is anybody who is listening to this or watching this who is not affected by at least one or two of those different kinds of issues over the course of their lifetime—in terms of their work, their retirement, their pay, in terms of discrimination, in terms of environmental

issues and women's privacy issues, which are so at risk at this particular time with this nominee. All of those issues are out there. All we are saying is, don't we think we ought to try to get it right? Don't we think we ought to have the chance to lay this out just a little more?

In every one of those examples I gave, in those nine different titles, there are cases on which Judge Alito has ruled. He has taken a position. In many of those cases he has taken the position in strong opposition to other judges appointed by Republicans. Judge Rendell talked about Gestapo-like tactics that were used when marshals came in on a civil action. There was no crime committed. It was a civil action in order to repossess a farm in bankruptcy to be sold at public auction. People had worked their whole lives for this small farm in Pennsylvania, and the marshals came in, they seized it, and grabbed these individuals who had committed no crime. There was no attempt to run. There was no attempt to hide. There was no attempt to evade. And we have Judge Rendell talking about Gestapo-like tactics by those marshals. Whether they were Gestapo-like or they were not Gestapo-like certainly ought to be decided by the jury. I think most of us would agree with that, would we not?

Judge Alito said: No, no, we are not going to let that go to the jury. They were just performing their own responsibilities. I am not going to let that go to the jury.

Other judges, on issues about whether there is discrimination in employment—including some Republican judges who sat with Judge Alito and said if we follow Judge Alito's reasoning and rationale we would effectively—''eviscerate'' is the word that was used—title VII, title VII being the provisions we passed in the 1964 act to make sure we were not going to discriminate in employment.

The list goes on. It is not just myself or others who have expressed opposition. We have the very distinguished Cass Sunstein of the University of Chicago who has done a review of Judge Alito's cases and said that 84 percent of the time Judge Alito decided for the powerful or the entrenched interests or the government. Cass Sunstein said that.

Knight Ridder, that is not a Democratic organ. That is not Democrat members of the committee. They have a whole group who analyzed his opinions independently. The Knight Ridder newspaper chain reached the same decision.

The Yale study group—gifted, talented students and professors up there at Yale University—did a study about Judge Alito's dissents and opinions and came to the same conclusion. If you are looking for someone who is going to protect the workers, if you are looking for someone who is going to protect men and women of color, if you are looking for somebody who is going to protect children, if you are looking for someone who is going to protect the privacy issues of women, this is not your candidate.

Those are the conclusions of a broad range of different groups who have studied this. It was a broad range. They are not just Democrats, not partisan. Knight Ridder is not partisan. Cass Sunstein is basically in the middle. Some will say this afternoon, oh, well, you can always find a few cases. It is not just a few. These are the overwhelming number of studies. Even the Washington Post study, in terms of the number of victories that people of color had or the workers had over the existing power system, reaches the same conclusion.

It seems to me we ought at least to have the opportunity to make sure the American people understand this. It takes time. It took some time for the American people to understand what was really happening in Iraq. It took some time. They understand now, but it took time. People are working hard. They are busy with their jobs and their families, and they are trying to do what is right and play by the rules. It takes some time for them to understand how this nominee is going to affect their lives and their well-being in the future. But there is nothing more important. There is nothing more important here in the Senate. There is nothing more important in the unfinished business of the Senate.

Just pick up the calendar and look at the unfinished business of the Senate. Nothing comes close to it. If you said right behind this is the Defense appropriations bill, this is going to delay a decision on armor and support for our troops, I would say, fine, let's let that go through. Maybe we will find time after that for Judge Alito. But that is not here. What are we doing after this? We are doing asbestos issues. That is entirely different. We have real questions on that, whether there is going to be adequate funding for those people who have been sickest and all the rest. We have to have a full debate on that issue. But there is no reason in the world we cannot take the time and can't have the debate on this issue, which is incalculably more important to the lives and well-being of Americans.

There are sufficient questions across the front pages of America's newspapers today that raise very serious issues and questions about this whole process that ought to cause our colleagues, friends, associates, the Members of this body, some pause. Let's try to think. Let's try to get it right. I say let's try to get it right. We will have an opportunity to do that this afternoon at 4:30.

Mr. President, I believe my time is just about up.

The ACTING PRESIDENT pro tempore. The minority has an additional 3 minutes.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, in one reference to Judge Rendell and also Judge Chertoff on the two cases I referenced, it was Judge Rendell who described the tactics of the marshals brandishing shotguns as ''Gestapo-like'' and Judge Chertoff who criticized Judge Alito's position in an equally bad case, Doe v. Groody, which involved the strip-search of the 10-year-old girl. I ask the RECORD reflect that change.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the time from 11 to 12 will be under the control of the majority side, and then debate will continue to alternate on an hourly basis until 4 p.m.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I appreciate the opportunity to talk a little bit about the judge issue that is before us. I have not done so until now. I have watched this debate with interest because I think it is one of the most important things we do.

The system, of course, is for the President to nominate and for the Senate to confirm or reject. So that is really one of the important issues before us.

I must confess I have been a little surprised at the system we have gone through. It has been strung out for a very long time and seems to me perhaps it has gone on longer than necessary, but nevertheless that is where we are. I was very pleased to learn it is not partisan, not political. I was a little surprised to hear that. But nevertheless I do think it is important.

I have not practiced law, but I certainly understand in our system the Supreme Court is one of the three elements of our Government and is a very important one. And so it is important that we deal with it. I just would like to say that it seems to me, as I have listened and as I have paid as much attention as I could to Judge Alito's hearings, I am certainly impressed. I am impressed with his qualifications and his experience. I would think surely one of the most important elements of the question of confirmation is experience, someone who has the qualifications, someone who has had the background. Certainly Judge Alito has that—Princeton University, Harvard Law School, Army Reserve, DOJ legal counsel, U.S. attorney, unanimously confirmed in New Jersey, circuit court judge Third Circuit, unanimously confirmed. He has argued 12 cases before the Supreme Court. Many attorneys, of course, have not had this kind of distinguished opportunity. I would guess

for the most part many of the candidates for the Supreme Court have not had that kind of experience. He has had some 15 years with the Third Circuit, some 35,000 votes. So the background is there.

I think one of the things, certainly, that is a part of the confirmation and the confirmation hearing and what we need to understand is the positions that these various candidates take, and I would like to just share a few quotations, responses that the judge gave to questions that were asked.

In terms of believing in the Constitution and that it protects rights for all, under all circumstances, in times of peace or war, the judge said:

Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances. It is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis, because that's when there's the greatest temptation to depart from them.

It seems to me that is very clear and one that has been talked about a good deal currently.

Another question was: Do you believe anyone, the President, the Congress, the courts, rise above the law? The candidate said:

No person in this country is above the law. And that includes the President and it includes the Supreme Court. Everyone has to follow the law, and that means the Constitution of the United States and it means the laws that are enacted under the Constitution of the United States.

Again, I think that is a very basic premise. We are all treated equally under the law. ''Under the law,'' that is the key.

I, as we do, go to schools quite often, and having spent some time on the Foreign Relations Committee, I often tell students that one of the significant differences about our country and most of the rest of the world is we have laws under which everyone is treated equally. I think that is one of the keys, and that response, it seems to me, is a great one.

He was asked would he base decisions on the Constitution and the rule of law, not shifting public opinion. He said:

The Court should make its decisions based on the Constitution and the law. It should not sway in the wind of public opinion at any time.

Certainly, that is a very important element as well. He was asked about his personal views and how that would affect his decisions. He said:

I would approach the question with an open mind, and I would listen to the arguments that were made.

When someone becomes a judge, you really have to put aside the things that you did as a lawyer at prior points in your legal career and think about legal issues the way a judge thinks about legal issues.

When asked about upholding the high standards of integrity and ethics, he said:

I did what I've tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

It seems to me those are the kinds of responses that make you feel comfortable with the candidate. So I am very pleased that apparently we are going toward the end. Certainly, it is time to get down toward the end. There is no reason to continue to drag this out. We know what we need to know, it is there, and it is time to do it.

So I think throughout the process the candidate has answered the questions to the best of his ability. Unfortunately, many of the questioners spent more time giving speeches and circumventing the process than asking relevant questions, but that is part of the process.

I must confess I am getting a little concerned about the Senate confirmation process. We ought to take another look at our role and not deviate from that role for other unrelated reasons. So I hope Members have not taken us down the path of setting a bad precedent, and I am sure that is not the case. I am looking forward to completing this process starting this afternoon and completing it tomorrow. I think we have before us a great opportunity to confirm one of the most capable persons that we could have on our Supreme Court.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I was here in the Chamber in the role of Presiding Officer during the presentation of the senior Senator from Massachusetts in which he referred to a story in this morning's New York Times with respect to public relations activity aimed at supporting Judge Alito. He was quite outraged at what he had read in the New York Times and talked about how improper it was for a public relations firm or any group of lawyers to gather together and mount a campaign on behalf of this nominee; that that should be left to the Senate and that there should be no outside interference in this process.

The New York Times had focused on the activities that had been in favor of the nominee, and the Senator from Massachusetts found that objectionable.

As I listened to him, I could not help but think of the actions that went forward in opposition to this nominee by groups of lawyers who gathered together to get their ammunition ready in the public arena, by public relations firms that were hired to oppose the nominee.

I remember the story in the Washington Post when John Roberts was proposed where they described those groups that were opposed to the President gathering with their press releases to attack the nominee, who were forced to strip out the name of the person they thought the nominee would be and put in John Roberts' name so that they could issue the press releases as soon as the name was made public. They had prepared their ammunition to attack the President's nominee before they knew who he was, and they were embarrassed by the fact that they had guessed wrong. But they did not change a single word of their attack once they knew that the actual nominee was someone different than they had anticipated.

My only comments to the Senator from Massachusetts would be that if he decries the work that was done in favor of a nominee by outside lawyer groups and public relations firms, he should join with some of the rest of us and say that the same criticism applies to those who were prepared to savage the nominee, whomever he might have been.

If the Senator from Massachusetts will have a conversation with Ralph Neas and the People for the American Way and say to them, Back off, let the nominee be made known, let his views or her views be made known, have a clear evaluation of where they stand before you start your public relations attack, then I will turn to the groups on the right and say the same thing: You back off. Let the nominee be known. Let the views be examined before you mount your public relations campaign.

But we saw what happened when people in support of a Republican President's nominee back off and allow the field to be dominated by those who are on the attack. Out of that first experience of seeing attack after attack after attack into an empty field, we have created a new word in the English language. It is a verb, to ''Bork.'' The nominee was Robert Bork. I had my problems with Robert Bork. I am not sure how I would have voted, having heard his record. But I do know that the record was distorted and the opportunity to hear his record was changed by virtue of the groups that were all prepared to savage him, to attack his personality, to destroy any careful analysis of his record. He was ''Borked.'' And we heard that other people would be ''Borked'' by this same savage attack from the left.

So I have sympathy with the Senator from Massachusetts when he complains about the groups on the right that were marshaled in advance of the nomination to defend the nominee. But I say to him they were marshaled to defend the nominee because they saw what happened when such previous activity was not carried forward. With the way in which the Chief Justice, John Roberts, moved through here, with both sides having their say but ultimately the public demonstrating a sense of revulsion about this whole ''Borking''

process, and now with Judge Alito moving forward in a manner far more dignified than we have seen in the past, I hope ''Borking'' would become a historic artifact and would disappear and that groups on the far left and the far right would finally realize that the Senate is not moved by these kinds of tactics; that the ads that are run, television ads attacking the nominee boomerang.

We have seen some of these groups that have attacked Judge Alito have had to have their ads taken down because they were false, they were attacked by the media generally for the severity and the falsity of their position. ''Borking'' does not work anymore. And I hope that both sides would recognize that the Senate has demonstrated a level of civility and intelligence in this situation that says we will not be moved by those who raise large sums of money, who run television ads in our home States savaging the nominee. We will be focused on what happens in the hearings. We will be focused on the actual record. We will not allow this to turn into an electoral circus.

That was done in the case of Judge Bork. It was not done successfully, although it was attempted with Chief Justice Roberts.

It is not working now with Judge Alito. I hope people on both sides will then abandon those tactics, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I assume the order of business is to speak on the Alito nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. Mr. President, I choose to do that.

I support the nomination of Samuel Alito. Judge Alito, as we heard in our hearings, and so far in most of the debate on the floor, is a person who is a dedicated public servant, who practices what he preaches: integrity, modesty, judicial restraint, and a devotion to the law and to the Constitution. He understands a judge should not have a personal agenda or be an activist on the bench but should make decisions as they should be decided—do it in an impartial manner, do it with an open mind, and do it with appropriate restraint and, of course, in accordance with the laws and the Constitution.

Listening to a lot of my colleagues on the committee, and last week, I am extremely disappointed that we are looking now at an attempt by Senators—and they are all on the other side of the aisle—to delay and filibuster this nominee. It is too bad Majority Leader FRIST had to take the extreme position of filing cloture on this very important nomination. No Supreme Court nomination has ever been defeated by filibuster if a majority of the Senators stood ready to confirm that nominee. Now, that certainly is not the case here because we already know a bipartisan majority of Senators will vote to confirm Judge Alito if we get to that point tomorrow at 11 o'clock. We also know we have had plenty of time to debate this nomination. It is unfortunate that certain Senators will vote against this nominee because they think doing so is a good political issue for them. These Senators are applying a very different standard to what has been the history and the tradition in the Senate of considering Supreme Court nominees. The position being taken by these Senators is that Judge Alito ought to somehow share Justice O'Connor's judicial philosophy in order for him to fill that seat where she has been for the last 25 years.

That sort of thinking is totally at odds with what the Constitution requires, but more importantly than what the Constitution requires, what has been the Senate's tradition in the last 225 years, and that is that Judge Alito does not have to be Justice O'Connor's judicial philosophy soulmate to deserve confirmation by this Senate. Because the Supreme Court does not have seats reserved for one philosophy or another. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of Government.

My colleagues on the other side, then, have it all wrong. There has never been an issue of ideological balance on the Court. If that were the case, do you think President Ford would have nominated Justice Stevens or President Bush 1 would have nominated Justice Souter—two Republican appointees who have turned out to be the most liberal members on the Court appointed by Republicans? Those Presidents did not think in terms of ideological balance.

The Senate's tradition, then, has not been to confirm individuals to the Supreme Court who promote special interests or represent certain causes. The Senate has never understood its role to maintain any perceived ideological balance on the Court. To the contrary, the Senate's tradition has been to confirm individuals who are well qualified to interpret and to apply the law and who understand the proper role of the judiciary to dispense justice.

Recent history, of course, is proof of that because in my years in the Senate, but as recently as 10, 12 years ago, when Ruth Bader Ginsburg was before the Senate, we gave overwhelming confirmation to her—a former general counsel of the very liberal group, the ACLU. She replaced a conservative Justice, Byron White, on the Court at that time. The Senate confirmed Justice Ginsburg. Why? Because President Clinton won an election, campaigning on the basis of the kind of people he was going to nominate, and President Clinton did that. That is what the Constitution says the role of the President, the role of the Senate is.

Now, some of my colleagues have said elections have results and the Constitution says the President gets to nominate Supreme Court candidates. Of course, Justice Ginsburg, whether you agree with her or not, had the requisite qualifications to serve on the Court.

Right after her, Justice Breyer came to the Supreme Court, a liberal as well, appointed by President Clinton. But the Senate confirmed that Justice by a big vote. The President made his choice, sent it to the Senate, the Senate found him qualified, and he was confirmed on an up-or-down vote. No filibuster was ever talked about, and no one talked about maintaining any ideological balance on the Court.

The Supreme Court, then and historically, is not the place to play politics. The Court is supposed to be, and as far as I know is, free of politics. But the Democrats and liberal outside interest groups want to change the rules because they did not win at the ballot box. They want to implement their agenda from the Court. Of course, that is a dangerous path, making the Supreme Court a superlegislature. The Constitution does not presume that. Under our checks-and-balances system of Government, we do not want to go down that path. Going down that path will create a standard that will seriously jeopardize the independence of the judiciary and distort our system of Government, a system based upon the judiciary being the arbiter of the war that often—I should say continually goes on between the executive branch of Government and the legislative branch of Government.

Democrats want the Supreme Court to assume an expansive role well beyond what was originally intended by the Constitution and its writers. They want the Court to take on a role that is closer to the role of the legislative branch, which is to make policy and bring about changes in our society.

Now, this has consequences when you go down this road. It has brought about the politicization of the judicial confirmation process that we have seen evidenced, particularly on the Alito nomination, but also on the Roberts nomination, or go back 3 years previous to the holding up of several circuit court nominees before this body through the threat of filibuster or not just the threat but the use of the filibuster.

Politicizing the judicial confirmation process is wrong. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process devolves into one focused less on whether a nominee can impartially and appropriately implement law. Instead, it becomes one

more focused on whether a nominee will implement a desired political outcome, and do it from the bench, regardless of the law and regardless of what the Constitution says.

Americans want what the Constitution writers have always called for: judges who will confine their job to interpreting the law as passed by legislative bodies and the Constitution as written rather than having the same group of men and women make policy and societal changes from the bench. We need to reject firmly the notion that the Supreme Court should be in the business of political decisionmaking or in the business of politicians—you and I who were elected to the Senate.

The Constitution provides that the President nominates a Supreme Court Justice and the Senate provides its advice and consent. Alexander Hamilton wrote an awful lot about the role the judiciary was to play and what judges were supposed to do because he had to explain that in relation to the ratification by the original 13 States. So he wrote several papers. But in Federalist 66, he wrote:

[I]t will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they [meaning the Senate] cannot themselves choose—they can only ratify or reject the choice he may have made.

The way the Senate provides its advice and consent has been by a thorough Judiciary Committee evaluation, and then by an up-or-down vote in the full Senate. The Judiciary Committee has an important job because its members can ask in-depth questions of the nominee. The committee evaluates whether the nominee has the requisite judicial temperament, intellect, and integrity. The committee also looks to see whether a nominee understands the proper role of a Justice and respects the rule of law and the words of the Constitution over any personal agenda because no Justice should be sitting on the Court who has a personal agenda that he wants or she wants to carry out.

I have been a member of the Judiciary Committee for more than 25 years and take this responsibility seriously, as do my colleagues. I thought Judge Alito did a very good job answering our questions and that he was candid. No doubt he was thorough. As far as I am concerned, he was very responsive.

Judge Alito understands the proper role of the judiciary is not to make the law. He will strictly interpret the law as written and do his best to remain faithful to the actual meaning of the Constitution. As Judge Alito said:

Judges don't have the authority to change the Constitution. The whole theory of judicial review that we have, I think, is contrary to that notion. The Constitution is an enduring document and the Constitution doesn't change. It does contain some important general principles that have to be applied to new factual situations that come up. But in doing that, the judiciary has to be very careful not to inject its own views into the matter. It has to apply the principles that are in the Constitution to the situations that come before the judiciary.

To quote Judge Alito again:

A judge can't have any agenda. A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

Judge Alito also understands that the Constitution provides justice for all, for everybody. He told the committee this:

No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

He said:

Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.

Judge Alito understands the importance of the independence of the judiciary in our system of checks and balances. We ought to be careful to make sure that we only approve judges who understand that. His colleagues believe Judge Alito will be an independent judge who will apply the law and the Constitution to every branch of Government and every person because Judge Alito knows that no one, including the President, is above the law. When I said ''his colleagues,'' I meant those colleagues who testified before our committee and have worked with him for a long time on that circuit.

One of his colleagues, Judge Aldisert, testified:

Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

Former Judge Gibbons, who now represents clients against the Bush administration over its treatment of detainees in Guantanamo, doesn't believe that Judge Alito will ''rubber-stamp'' any administration's policy if it violates the law and Constitution. He said:

I'm confident, however, that as an able legal scholar and a fairminded justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

Yet Judge Alito's critics claim he is out of the mainstream. That is what the debate last week was all about from the other side, that he is a judge with an agenda hostile to individual rights, civil rights, women, and the disabled. The truth is, Judge Alito's record has been distorted and mischaracterized. First, a statistical analysis that some try to use of how many times a certain kind of plaintiff wins or loses is not the way we dispense justice in America. It is a bad way to look at a judge's record. It is easy to manipulate and cherry pick cases to reach certain desired conclusions of why somebody should not be on the bench. But the bottom line is, who should win in a case depends on the facts presented in that specific case and what the applicable law says. What is important to Judge Alito is that he rules on specific facts in the case and the issue before the Court, in accordance with the law and the Constitution.

As his colleagues attested, Judge Alito doesn't have a predisposed outcome in cases. He doesn't bow to special interests but sticks to the law regardless of whether the results are popular. That is precisely what good judges should do and what good judging is all about.

Moreover, when you consider all these accusations, look at what the ABA said. They unanimously voted to award Judge Alito their highest possible rating, and that is, in their words, ''well qualified.'' A panel of Third Circuit Court judges—I already referred to two of them—who worked with Judge Alito more than 15 years, in their testimony had unqualified support for Judge Alito as they appeared before the committee. These colleagues didn't see Judge Alito to be an extremist, hostile to specific groups, or with having a personal agenda. They testified about Judge Alito's fairness, his impartiality with respect to all plaintiffs.

Judge Lewis, one I have not quoted yet, described himself to the committee to be ''openly and unapologetically pro-choice'' and ''a committed human rights and civil rights activist.'' But yet a person coming from this end of the legal continuum fully endorsed Judge Alito to the Supreme Court, testifying:

I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

The testimony of Judge Lewis continues:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today . . . I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Justice Aldisert summarized these judges' testimony best on the day they appeared before the committee when he said:

We who have heard his probing questions during oral argument, we who would have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.

What other conclusion can you come to when you listen to people who have been close to him for a long time? We had a lot of people who worked with him on the court, who were not judges, who also appeared from both political parties. How can you come to any conclusion other than Judge Alito is going

to do what Justices on the Supreme Court ought to do based upon his 15 years on the circuit court, that he is fair and openminded and will approach cases without bias and without a personal agenda?

The people who know Judge Alito best believe, without reservation, he is a judge who follows the law and the Constitution without a preset outcome in mind. They believe he is a man of great integrity, modesty, intellect, and insight. They believe he is a fair and openminded judge, committed to doing what is right rather than committed to implementing a personal agenda.

After hearing all that, some of my colleagues ought to be ashamed of the blue smoke they are making out of this nomination or the ghosts they are putting up to scare us. Judge Alito will carry out the responsibilities that a Justice on the Supreme Court should, and he will do it in a principled, fair, and effective manner.

If Members have any doubt where I stand, I will cast my vote in support of Samuel Alito. This highly qualified nominee deserves to be confirmed to the Supreme Court. I hope my colleagues will see that as well and vote accordingly, particularly on a very tough vote because of the extraordinary majority it takes to also vote to end a filibuster, the first filibuster of the 110 nominees to the Supreme Court. Hopefully, we will never see another extraconstitutional action taken by our colleagues on the floor of the Senate with such a filibuster once again. Vote to end the filibuster late this afternoon and then vote to confirm Judge Alito tomorrow.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Ms. STABENOW. Mr. President, this is an incredibly important time in our Nation's history. This is the second Supreme Court nominee to come before the Senate in the past 6 months. We are truly at a time where we are making decisions that will affect our children, our grandchildren, and an entire generation of people. Sandra Day O'Connor, the first woman Justice, and often the critical deciding vote, is retiring, as we know. The nominee who will replace her will have the power to change the direction of the Court and, as I indicated, touch people's lives, affect people's lives and opportunities for a generation.

I take this constitutional responsibility very seriously, as I know my colleagues do. I have closely studied Judge Alito's written opinions, his testimony, as well as the hearing transcript. I commend Senators SPECTER and LEAHY for conducting the hearings in a respectful and bipartisan manner. The Constitution grants all Americans, as we know, the same rights and liberties and freedoms under the law, which is why it is so important that we get this right. These are the sacred values upon which the United States was founded—not just words, but they are values, they are beliefs, they are the motivation for us as we, together, fight for the things we want for our families and work hard every day as Americans to make sure this democratic process works for everybody. We count on the Supreme Court to protect these constitutional rights at all times, whether the majority agrees or whether it is popular. Every American has the same rights under our Constitution.

Judge Alito's nomination comes at a time when we face new controversies over governmental intrusion into people's private lives, from secret wiretaps conducted without a warrant or the knowledge of the FISA Court, to attempt to subpoena millions of Internet searches at random from companies such as Google. One of the most important responsibilities of the Supreme Court is to serve as a check on excessive Government intrusion into people's lives.

In light of where we are today and the issues that this Court will face, it is even more important to have a Justice who will stand up for Americans.

Unfortunately, Judge Alito's record is clear and deeply troubling. When one looks at his writings, his court opinions from over 15 years on the Third Circuit Court of Appeals, and when one looks at the hearing transcripts, there is a clear and consistent record of siding with the government, siding with other powerful interests at the expense of American citizens.

In case after case, whether it is about job discrimination, pensions, illegal searches, or privacy issues, he has been an activist judge who has tilted the scales against the little guy. Often, he has been criticized by his colleagues as trying to legislate from the bench in order to reach the result he desires.

His views are way outside the mainstream, especially in his dissent opinions. There are numerous cases where Judge Alito was the only dissenter, which means he felt strongly enough about his personal views that he objected to what the other 10 judges supported and wrote his own separate opinion on an issue. These dissents give insight into what I believe is an extreme ideology on the most basic of American freedoms, liberties, and rights.

Because of his extreme record and after much deliberation, I concluded that Judge Alito is the wrong choice to replace Sandra Day O'Connor on the U.S. Supreme Court. He may well, as we know, be the deciding vote on issues that affect our children and grandchildren and an entire generation.

His record on workers' protections is outside the mainstream. Our manufacturers are struggling in Michigan, as well as across the country, and every day we see announcements of plant closings and filings of bankruptcy. Michigan families are worried. They are worried that they will not have a job tomorrow. They are worried that they are going to lose their pensions and their health care benefits for themselves and their families. We in Michigan need a Supreme Court nominee who will stand with us, stand with Michigan's workers and families, and Judge Alito is not that nominee.

In Belcufine v. Aloe, a company in bankruptcy did not give its employees the retirement benefits and vacation time they earned before the bankruptcy. Under Pennsylvania law, corporate officers are personally liable for nonpayment of wages and benefits. The employees sued, and Judge Alito sided with the company, saying that the law did not apply once a company filed for bankruptcy. Not only did he side with the CEOs at the expense of their workers' hard-earned wages and pensions, but he legislated from the bench to get the result he wanted.

Judge Greenberg, a Reagan appointee, wrote a strong dissent accusing Judge Alito of trying to rewrite the Pennsylvania law, stating:

> [W]e are judges, not legislators, and it is beyond our power to rewrite the [law] so as to create a bankruptcy exception in favor of statutory employers merely because we believe it would be good for business to do so.

Again, a colleague indicating that, in fact, Judge Alito was writing law instead of just interpreting the law.

In another case addressing pension benefits, the plaintiff had worked in jobs covered by the Teamsters pension fund from 1960 to 1971, had a 7-year break in service, and then worked under the fund again from 1978 until his retirement. The majority on the court held that both periods of employment would be counted when you are calculating his pension benefits, regardless of the break in service. If you are working and then you need to take a break, whether it is illness, caring for a loved one—regardless of the circumstance—if you come back to work under the pension system, you work until retirement, all of the years you worked hard should be counted toward your pension.

Judge Alito dissented, arguing that the first period of employment, a total of 11 years of hard work, should not count, essentially cutting the workers' pension benefits. If his dissent had prevailed—and thank goodness it did not—workers across this country would have their pensions cut, even if they worked 30 years in one job, if there was a gap in their employment. That is not right. If you work hard for 30 years, you should get the entire pension you paid in and you have earned.

The majority once again admonished Judge Alito for ignoring the plain language of the law and trying to legislate from the bench, reminding him that:

> Changes in legislation is a task for Congress and if our interpretation of what Congress has said so plainly is now disfavored, it

is for Congress to cure. We do not sit here as a policy-making or a legislative body.

Judge Alito has had a clear and consistent record when it comes to siding with corporate interests over working Americans and, in many of these cases, he has been out of step with the majority of the court. He dissented on a case to pay reporters overtime pay under the Fair Labor Standards Act. He dissented from a majority opinion that found a company in violation of Federal mining safety standards on a site where they were removing materials from a refuse heap and sending them to powerplants to be processed into electricity. These are laws that exist to protect working Americans, to protect their health and their safety. The recent tragedies in West Virginia have reminded us of how important this is, but Judge Alito argued that the safety standards did not apply to this site.

The same is true for workplace discrimination cases. Time and again, he has voted to make it more difficult for victims of discrimination to get their day in court as Americans.

In Sheridan v. E.I. DuPont de Nemours, a hotel employee sued, claiming sex discrimination. Over the years, she was promoted from a part-time waitress to a supervisory position. She received commendations and bonuses for her work. But after she complained about sexual harassment, she was demoted, and her work environment got worse and worse.

The trial court dismissed the case, and by a vote of 10 to 1, the Third Circuit reversed, saying she had produced enough evidence to warrant a jury trial of her peers. Judge Alito was the lone dissenter, arguing that she had not presented enough proof and that her case should be dismissed. When you are outnumbered 10 to 1, you really are outside the mainstream.

In another dissent, Judge Alito voted to deny a mentally retarded young man the chance to challenge severe abuse and sexual harassment. In his very first job out of high school, he had suffered vicious sexual harassment. He was held down in front of a group of workers, subjected to sexual touching, and he feared he would be raped. Judge Alito would have denied him a trial, not because the facts were disputed but because he felt that the brief was not well written.

Judge Alito even joined an opinion preventing veterans from suing the Federal Government for failing to enforce a law which requires agencies to have plans in place to help veterans gain employment.

The Supreme Court is the ultimate check on Presidential overreaching. However, when he was at the Justice Department, Judge Alito advised to expand Presidential power and argued that ''the President's understanding of a bill should be just as important as that of Congress.'' So, in other words, passing a bill for us is not enough; equal standing is what the President believes it says or wants it to say or his opinion on what it says.

He recommended that when the President signs a bill passed by Congress, he should issue a signing statement announcing his interpretation of the law in order to influence the court's interpretation, essentially creating a backdoor line-item veto.

Why is this important? I had one particular case recently which I will share with you, Mr. President. Last fall, Senator VITTER from Louisiana and I included an amendment in the 2006 Commerce-Justice-State appropriations bill to prevent the pharmaceutical industry from taking advantage of the President's trade promotion authority to insert language that prevents prescription drug importation.

A majority of us in the Senate and in the House believes that we should be able to safely bring retail prescription drugs back into our country for our citizens at a much reduced price. There was also a nearly identical provision put in the House bill, and in the final bill, we basically were saying you can't use trade agreements to stop a policy that is supported by Congress and use it as a backdoor way to stop the reimportation of less expensive prescription drugs for citizens.

Even though this was in the final bill that came to the President's desk, in his signing statement, the President stated that this section was ''advisory.'' We passed a law—bipartisan, House, Senate—and it goes to the President's desk. He signs it but states that this section is advisory and basically backdoor-vetoed this new law. The President can't pick and choose which provisions of a law he will enact when he signs a new law when it is passed by this Congress.

These views of Presidential power are troubling enough, but Judge Alito's record on the bench only reinforces his unwavering support for the government's position in case after case. Whether it is the President of the United States or a low-level official, he has supported the government's position at the expense of Americans' liberties and rights.

One of the most important issues we face today is personal privacy and freedom. We are having this debate in the Senate right now with the PATRIOT Act reauthorization, and we see it in the news reports with the Justice Department seeking unprecedented amounts of information on what Americans look up on the Internet.

When has the government gone too far? It is a question we face in the Senate, and the Supreme Court will have to eventually answer. Unfortunately, in cases involving privacy, security, and protection from unjustified search and seizures, Judge Alito has consistently sided with the government interests.

As an Assistant Solicitor General in the Reagan administration, Judge Alito authored a memo on whether the Justice Department should file a friend-of-the-Court brief in Tennessee v. Garner, a Supreme Court case on the constitutionality of a Tennessee law which allowed police to shoot a fleeing suspect, even when the shooting was intended only to prevent the suspect from escaping and not to protect the officer or the public from harm.

In this case, a 15-year-old boy broke into a house and stole $10 worth of money and jewelry. The police arrived while the boy was in the process of running away. They ordered him to stop. He did not stop. And despite the fact they could see he was unarmed, the officer shot him in the back of the head and killed him. The officer did not shoot this unarmed 15-year-old because he was a danger to others but to keep him from escaping.

The Sixth Circuit found that this law was unconstitutional, but in his memo, Judge Alito argued that the case was ''wrongly decided'' and that this was an issue that should be left to the State legislatures.

The Justice Department did not file a brief in this case, and the Supreme Court ultimately rejected Judge Alito's position and found the law unconstitutional, writing:

> It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that police arrive late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.

In Doe v. Groody, Judge Alito dissented from a majority opinion written by now Homeland Security Secretary Michael Chertoff to uphold the strip search of a 10-year-old girl and her mother, even though neither was a criminal suspect, presented any risk or was named in the search warrant.

The search warrant specifically limited the search of persons to the suspect, John Doe, but when police arrived, they only found Jane Doe and her 10-year-old daughter inside the house. They took the mother and the little girl to another room and strip-searched them, having them lift their shirts, drop their pants, and turn around.

Judge Chertoff held that the warrant clearly limited police authority to the search of John Doe and not all occupants in the house. Judge Alito dissented, accusing the majority of a ''technical'' and ''legalistic'' reading of the warrant. The warrant was clear, but Judge Alito argued for a broad departure from what was actually written in the warrant in a way that would favor governmental intrusion.

I hear my colleagues from across the aisle saying over and over again that they want judges who will follow the law and not legislate from the bench. Judge Alito ignored the plain language of a search warrant in order to allow the strip search of a 10-year-old girl. How is this not legislating from the bench?

Judge Chertoff certainly thought so. He criticized Judge Alito's view as threatening to turn the requirement of a search warrant into ''little more than the cliche rubberstamp.''

In another case deeply concerning to me, a family of dairy farmers was being forced off their farm by a bankruptcy court. This was in Pennsylvania. It could easily have been in Michigan or anyplace else in the Midwest. When they refused to leave their farm, seven U.S. marshals and a State trooper arrived at their home to evict them by pointing shotguns and semiautomatic rifles at the family. The marshals grabbed a family friend who was also at the house and used him as a human shield. They put a gun to the man's back, led him into another house on the property, and told him: If anything goes wrong in here, you are going to be the first to go down.

The family sued, arguing that the marshals used excessive force. Judge Alito wrote an opinion saying it was reasonable for marshals, carrying out an unresisted civil eviction notice, to point shotguns and semiautomatic rifles at a family sitting in their living room. These people were not criminals. They were not dangerous. They were dairy farmers who had lost their home and their livelihood because of a bankruptcy.

Judge Alito also argued that putting a gun to the man's back and using him as a human shield was not an unreasonable search under the fourth amendment because the marshals never told him that he wasn't free to leave.

A fellow judge on the court dissented and called the marshals' conduct ''Gestapo-like'' since seven marshals had detained and terrorized the family and friends and ransacked a home while carrying out an unresisted civil eviction. But Judge Alito's decision made sure the family never got a trial.

In another dissent, Judge Alito again would have allowed the invasive search of a mother and her teenage son based on a broad reading of a warrant. Mrs. Baker and her three children arrived at the home of her oldest son for dinner in the middle of a drug raid by police. The warrant was limited to the search of her son's home, but when Mrs. Baker and her three children started walking up to the house, the police threatened them with guns, handcuffed them, and dumped Mrs. Baker's purse out onto the ground. They then took her teenage son into the house and searched him. Judge Alito once again dissented to keep a jury from hearing whether the police acted unlawfully by handcuffing, holding at gunpoint, and searching a mother and her teenage children who by happenstance walked up to visit the home of a family member.

This disregard for the personal privacy and freedom of Americans extends to the decision on a woman's right to choose, which affects every woman in this country. In Planned Parenthood v. Casey, Judge Alito voted in dissent to uphold a law requiring a woman to notify her husband before exercising her constitutional right to obtain an abortion. He argued that the spousal notification provision would only restrict a small number of women and didn't substantially limit access to an abortion, even though the women affected may face physical abuse as a result of this requirement. The Supreme Court, including Judge O'Connor, affirmed that the spousal notification provision was unconstitutional, rejecting Alito's argument, comparing it to antiquated 18th century laws that said that women had no legal existence separate from their husbands.

Justice O'Connor eloquently summarized the problem with Judge Alito's position, writing, ''women do not lose their constitutionally protected liberty when they marry.''

These cases are not isolated instances. They are part of a long and consistent record of siding with powerful interests over Americans—people who have had their rights violated, people who have been injured, people who have lost their pensions, people who have been victimized and are asking the court to make things right, make things whole, women in this country who want to know they are respected in their privacy and their most personal decisions, just like men.

For 15 years, Judge Alito has said no. A group of schoolchildren, ages 6 to 8, were being sexually abused by their bus driver. Despite the young age of the children and the fact that the driver had total custody of them when they were on the bus, Judge Alito joined an opinion dismissing the case, arguing that the school superintendent did not have a duty to make sure the children were protected because riding the bus wasn't mandatory.

A disabled student had to drop out of medical school because of her severe back pain that made it difficult for her to sit in classes for hours at a time. She had requested a special chair during class so she could continue her studies and become a doctor. The school failed to accommodate her request, and the Third Circuit ruled that her case should go forward, she should have her day in court. But Judge Alito dissented, arguing that the case should not go to trial; she should not get her day in court. The majority wrote that ''few if any Rehabilitation Act cases would survive'' if Judge Alito's view prevailed.

A college student died at a varsity lacrosse practice. None of the team's coaches were trained in CPR. The nearest phone was 200 yards away on the other side of a 8-foot fence, and there was no ambulance on the field. The Third Circuit ruled to allow the case to move forward, for the family to have their day in court. But once again, Judge Alito said no.

A worker suffered severe injuries after being thrown through the windshield of a garbage truck after the brakes of the truck failed. He brought a products liability lawsuit, arguing that the damaged hydraulic brake lines were a design defect. The Third Circuit ruled in favor of the injured worker, but Judge Alito sided with the company.

When we take a step back and look at the entirety of Judge Alito's record, we see a systematic tilt toward powerful institutions and against the little guy; a long history of writing ideologically driven dissents that are not only out of step with the majority of his peers on the Third Circuit but are way outside the mainstream of America.

Let me say in conclusion, whether it is a family losing their dairy farm, workers losing their pensions, a mentally disabled young man who was the victim of sexual harassment in the workplace, an unarmed 15-year-old boy being shot dead in the back of the head, a strip search of a 10-year-old girl, or the ability of a woman to make her own reproductive health decisions, Judge Alito has consistently said no to the daily concerns of average Americans.

Now we are being asked not just to confirm a nominee who has spent 15 years tipping the scales of justice against those Americans but to confirm a judge who will replace Sandra Day O'Connor, a woman who was a consensus builder, a uniter on the U.S. Supreme Court.

Based on this record, I cannot in good conscience cast my vote for Samuel Alito to be Associate Justice of the U.S. Supreme Court. The Supreme Court is the ultimate check on Presidential overreaching. And over and over again, we see this judge siding against Americans.

We can do better than this nominee at this critical time in American history, and I urge my colleagues to join me in voting no on this nominee.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, on countless nominations Democrats have joined Republicans and Republicans have joined Democrats to send a judicial nomination to the floor with a powerful, bipartisan vote. Chief Justice Roberts came to the floor 13 to 5. Justice Breyer came to the floor unanimously. Justice Ginsburg came to the floor unanimously. Justice Breyer won on the floor 87 to 9; Justice Ginsburg, 97 to 3; and Chief Justice Roberts, 78 to 22.

But, in this case, Judge Alito comes to the floor in a straight party line, particularly divided vote. In a divided country, at a time of heightened partisan tensions, at a time of ideology often trumping common sense or broad public interest, the President has chosen to send a Supreme Court nominee who comes directly out of a revolt by the ideological wing of his party in order to satisfy their demand for ideological orthodoxy.

Some people obviously delight in that. We have read about that today in the New York Times. And that is their right. But most don't. Most don't think that is the way to pick a Supreme Court Justice. It doesn't mean it is good for the country, it doesn't mean it fills our current needs, and it doesn't mean it is even the right thing to do.

As we approach this nominee, we can't forget that he was not the President's first choice. His first choice was Harriet Miers, and opposition to her nomination came not from Democrats but from the far right of the Republican Party. They challenged her ideological purity with such conviction that the President capitulated to their demands and gave them Judge Alito instead—a nominee who they received with gleeful excitement.

Jerry Falwell ''applaud[ed]'' his appointment. Ed Whelan called it ''a truly outstanding nomination.'' Rush Limbaugh called the nomination ''fabulous.'' Ann Coulter and Pat Buchanan raved about how it would upset liberals. This rightwing reaction can only mean one thing: they know what kinds of opinions Judge Alito will issue—opinions in line with their extreme ideology.

All of this is to be contrasted with the standard set out by Justice Potter Stewart. He said:

> The mark of a good judge is a judge whose opinions you can read and . . . have no idea if the judge was a man or a woman, Republican or Democrat, a Christian or Jew . . . You just know that he or she was a good judge.

What he is saying is not really limited to the status of religion, gender, or politics, or any other trait by which we categorize people. He is saying that a good judge through all their decisions shows no discernible pattern of identity that pigeonholes that judge except for the purity of their legal reasoning, their genuinely open-minded approach to judging.

But in Judge Alito we do see patterns—patterns which demonstrate a bias towards the powerful, patterns which demonstrate a lack of skepticism towards government overreaching, and patterns which demonstrate a hostility to the disadvantaged and the poor. This doesn't mean that Judge Alito never rules in favor of an individual suing the government for an unlawful search or a minority suing a corporation for unlawful discrimination. But it does mean that in the overwhelming majority of cases he has not. And this raises the question of whether he approaches each case with an open mind or whether he comes with a bias that can only be overcome in the rarest of circumstances.

So why should the debate on Judge Samuel Alito continue now? Well, to begin with, there hasn't been that much debate on this nomination in the first place—a nomination of extraordinary consequence. It came to the floor on Wednesday the 25th, and cloture was filed the very next day on Thursday. To this moment, not more than 25 Democratic Senators have had a chance to speak. At this time, the Senate has spent a total of 25 hours on a nomination that will last a lifetime.

The direction our country will take for the next 30 years is being set now and this is the time for debate. This is the time when it counts. Not after the Supreme Court has granted the executive the right to use torture, or to eavesdrop without warrants. Not after a woman's right to privacy has taken away. Is history going to care what we say after the courthouse door is slammed in the faces of women, minorities, the elderly, the disabled, and the poor? No. Except to wonder why we didn't do more when we knew what was coming.

Obviously, I have heard some people try to argue that exercising our rights is ''obstructionist.'' But did people suggest it was obstructionism when the extreme rightwing of the Republican Party scuttled the nomination of Harriet Miers? How many times have we heard our colleagues come to the floor and demand that judicial nominees get an up-or-down vote? She never got an up or down vote. She never even got a hearing. Yet a minority in the Republican Party was able to stop a nominee that they considered unfit for the Supreme Court.

It is hardly obstructionist to use, as the former chair of the Judiciary Committee Senator HATCH described it, ''one of the few tools that the minority has to protect itself and those the minority represents.'' That is exactly what we are doing here. That is why we have the Senate and the rules we live by. We are protecting basic rights and freedoms that are important to every American: privacy, equality, and justice.

It is important to remember that the rights we are expressing concern about didn't come easily. Access to the court house, civil rights, privacy rights, voting rights, antidiscrimination laws—all of these were hard fought for. They came with bloodshed and loss of life. Their achievement required courage and determination. None of these basic rights were written into law without a fight, and still today it requires constant vigilance to make sure they are enforced and maintained. That commitment for vigilance is one of the characteristics that should leap out in a Supreme Court nominee.

We should remember that even though the 13th, 14th, and 15th amendments outlawed slavery, provided for equal protection under the law, guaranteed citizenship, and protected the right to vote for African American Americans, the fact is the Federal Government took very little action to enforce them until the 1960s. Few politicians were willing to take a stand—to fight for the rights of African Americans. Something besides grassroots pressure was ultimately needed to prompt the Congress into action. That something was the unanimous Supreme Court decision in Brown v. Board of Education.

Imagine if the Court had not enforced the equality guaranteed by the 14th amendment. Imagine if it still had the ideological outlook it had when Plessy was decided. Or when Dredd Scott was decided. Two of the most ideologically driven—and regrettable—decisions ever. Segregation would still be a fact of life. African American children would be forced to attend their own schools, would be receiving an inferior and inadequate education. And, there would have been no catalyst to start the civil rights movement.

So a vote for a Supreme Court nominee is in fact a vote for the rights and freedoms we care about and fight for. That is exactly what this vote is.

There is no question in anyone's mind. Samuel Alito will have a profound impact on the Supreme Court. This is a pivotal moment in history for the Court. You only need to look at his past opinions to know that much.

Let me share with you the story of David D. Chittister. On February 14, 1997, David requested sick leave from the Pennsylvania Department of Community and Economic Development, where he worked. He was granted leave, but approximately ten weeks later, his leave was revoked, and he was fired. David knew that the Family Medical Leave Act guaranteed him 12 weeks of sick leave. So he sued the Pennsylvania Department of Community and Economic Development for firing him during that time.

Put yourself in David's shoes. Imagine that you become sick. You become so sick that you are hospitalized, completely unable to work. The only reason that you can afford your treatment is because you are still employed. And above all you believe that you are protected by the Family Medical Leave Act.

Now imagine that Judge Alito is on the Supreme Court. He is one of the nine voices that gets to decide whether the Family Medical Leave Act is constitutional. And he votes the way he did on the Third Circuit, invalidating that part of the Family Medical Leave Act which guarantees an individual 12 weeks of sick leave and applies to you. You are out of luck as you face mounting medical bills without any source of income.

This is not hypothetical. That is the decision he made. Health care is a very real problem for many more Americans than ever. Many of us have been pushing for a national approach to health care for years. Our citizens can't get the sick leave they need to take care of themselves. They cannot get adequate health insurance—coverage isn't what it should be. The Family Medical Leave Act was a step in the right direction to deal with family values and health needs. It made sure that people could take the time they needed when they became seriously ill without losing their income. It was enacted with overwhelming bipartisan support in a 71 to 27 vote. But if Judge Alito were on the Supreme Court and he follows his own precedent, it would no longer protect State employees.

So I ask my colleagues who voted for the Family Medical Leave Act: didn't we do exactly want we meant to do? Didn't we need to protect all workers? So is it right, now, to put a person on

the Supreme Court who will undo the good that we did with that legislation?

Take another example. Many of us have talked on the floor about how Judge Alito routinely defers to excessive government power. And how he is willing to overlook clear fourth amendment violations in the process. This may seem abstract to a lot of people right now, but listen to the facts of this case.

A family of farmers, the Mellotts, fell on hard times. They had to declare bankruptcy and were ordered to leave their farm—like a lot of farmers these days. They asked for permission to appeal and were denied. They asked that the judge be disqualified and were denied. They didn't accept the eviction order and refused to leave their farm. So the marshals were sent to evict them.

When Bonnie Mellott answered the front door, a deputy marshal entered, pointed his gun ''right in her face,'' pushed her into a chair, and kept his gun aimed at her for the remainder of the eviction. Another deputy entered, ''pumped a round into the barrel'' of his sawed-off shotgun, pointed it at Wilkie Mellott, and told him ''to sit still, not move and to keep his mouth shut.'' When he did this, the marshals knew Wilkie Mellott was recovering from heart surgery.

But that wasn't all. Another marshal ran into the kitchen where a guest was on the telephone with a local sheriff. He ''pumped'' his semi-automatic gun, ''stuck it right in [her] face and . . . said: 'Who are you talking to, hang up the phone.''' When she continued talking, the marshal put his gun ''to the back of her head'' and repeated the order.

I won't go into further details, but you get the picture. Now obviously the Mellotts were in the wrong to stay in their farm. They were ordered by the court to leave, and they should have. We all understand that.

But there is no fact in evidence suggesting that once the marshals got in the house there was resistance—no facts suggesting there was need for force or intimidation. Nothing justified running into a house, waiving sawed-off shotguns and screaming at the occupants. These folks weren't criminals. They weren't armed. They weren't resisting arrest. You know what, it is tough enough to get kicked off your property; it is another thing to be treated like a felon, absent cause, with pumped shotguns shoved in your face. Most reasonable people would conclude that the government's actions were excessive. But Judge Alito did not, and he wrote the majority opinion for two of the three judges hearing the case calling the law enforcement conduct reasonable. The dissenting judge disagreed. He said that once the marshals arrived and realized that the Mellotts were neither armed nor dangerous, the use of force was ''clearly not objectively reasonable.''

Where do you come out on this? Which view do you want on our Supreme Court?

Let me also share another story this one about Beryl Bray. Beryl was an African-American female who worked her way up from a room attendant to a Housekeeping manager for Marriott Hotels in less than three years. When the position of Director of Services opened up, Beryl applied. A Caucasian woman got the job, and Beryl sued claiming discrimination.

Now, as a Housekeeping manager, Beryl probably did not make a lot of money. She probably used a lot of her resources to bring her discrimination claim. She wanted her day in court. If Judge Alito had his way, she wouldn't have gotten it. Critical facts were in dispute. Facts which, if resolved as Beryl claimed they should be, would establish a clear case of discrimination. As the lawyers here know, the factual disputes should have been resolved by a jury of her peers. Beryl was entitled to her day in court. Judge Alito, however, did not agree. He would have resolved the facts on his own in favor of Marriott Hotels. He would have ended the case then and there.

Or let's talk about Harold Glass. Mr. Glass worked at Philadelphia Electric Company, of PECO as it is known, for 23 years before he retired. While working full-time, Harold attended school to improve his career opportunities. Over the years, he earned two associate degrees, a bachelor of science degree in industrial and management engineering and a bachelor of science degree in engineering.

In addition to his full-time work and continuing education, Harold was a long-time activist on behalf of PECO employees. In 1968, he helped organize the Black Grievance Committee to respond to problems of racial fairness, including inadequate representation of minorities by PECO's uncertified labor organization. He served as an officer. He represented employees in handling routine individual grievances before management and negotiated with management about employee concerns. In addition, he took the lead in organizing witnesses in three legal actions against PECO concerning racially discriminatory employment practices.

Over the years, Harold applied for promotions to new positions, but each time he was rejected. In addition, he was not able to apply for positions he would have liked to have because they were never posted by the company. This despite the fact that, in 23 years of employment with PECO, Harold received only one performance evaluation which was less than fully satisfactory—when he was serving as a junior technical assistant. Harold claimed that racial harassment at that time from his coworkers and a hostile work environment had affected his job. But the trial judge did not allow him to demonstrate these facts.

On appeal, a divided three-judge panel reversed the trial judge's decision. Two of Judge Alito's colleagues believed that Mr. Glass should have been allowed to present the evidence of racial discrimination to the jury. Judge Alito, however, disagreed. He thought that allowing Mr. Glass to tell his side of the story might cause ''substantial unfair prejudice.'' He called the trial judge's refusal to allow Mr. Glass's evidence ''harmless.''

Harmless. Was it harmless to Mr. Glass? What do you think? Do you think its harmless error to keep a discrimination plaintiff from showing evidence of discrimination? I think most reasonable people would disagree with Judge Alito.

I believe that is the problem here: Judge Alito has demonstrated a pattern of looking at discrimination claims with a high degree of skepticism. In the dozens of employment discrimination cases involving race that Judge Alito has participated in, he ruled in favor of African Americans on the merits in only two instances. He has never authored a majority opinion favoring African Americans in such cases. He has dissented from rulings of his colleagues in favor of African-American plaintiffs, and in doing so has required an unrealistic amount of evidence before he is willing to step in on behalf of wronged individuals. He is not willing to give them the benefit of the doubt even to just let a jury decide their case.

This is an unacceptable view of the way our country works. Americans know that what sets us apart from almost any other country is the right of any citizen no matter where they come from, what their lot in life is to have their day in court. That is what makes America special. This little guy can hold the big corporations accountable.

Our nation is defined by the great struggle of individuals to earn and protect their rights—particularly the disadvantaged. We have worked hard to ensure that no one is denied their civil rights. Judge Alito's track record casts serious doubt on his commitment to that struggle. The legislation we pass protecting individuals against discrimination requires the courts to fully enforce it. And we just don't keep faith with ourselves if we empower individuals to sue large corporations who act unlawfully and then have the courts refuse to hold them accountable.

Judge Alito's hostility to civil rights claims is not my observation alone. It is an observation shared by many people who have reviewed his record. Let's not forget that after reviewing more than 400 of Judge Alito's opinions, law professors at Yale Law School—Judge Alito's alma matter—concluded that:

> In the area of civil rights law, Judge Alito consistently has used procedural and evidentiary standards to rule against female, minority, age and disability claimants. . . Judge Alito seems relatively willing to defer to the claims of employers and the government, over those advancing civil rights claims.

That is the opinion of those who have studied his record. Similarly, Knight-

Ridder concluded that Judge Alito ''has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the nation's laws'' and that he ''seldom-sided with . . . an employee alleging discrimination or consumers suing big business.''

Judge Alito may believe that it is his duty to keep these types of cases away from the jury. He may, and in fact probably does, believe that he is doing the right thing. That is his right. But, it is my right to judge the facts of these cases and disagree. It is my right to say that the record of his reaction to the same facts should not be elevated to the Supreme Court.

A fair amount has been said about Judge Alito's endorsement of the unitary executive theory. This is a complicated and somewhat abstract theory of constitutional interpretation, but if it is ever endorsed by a majority of the Court, it will have a significant practical impact on our everyday lives.

What it says is that the President alone is responsible for enforcing the laws. At its most simplistic, it seems somewhat reasonable: Congress makes the laws, the President enforces the laws, and the judiciary interprets the laws. The theory, in fact, dates back to the administration of Franklin Roosevelt, and it has been championed by liberal and conservative scholars and administrations as a way of asserting the President's ability to retain control over independent agencies. But, use of the theory in recent times has been changing.

During Judge Alito's tenure, the Reagan administration developed new uses for the theory. It was used to support claims of limitless presidential power in the area of foreign affairs—including the actions that became the Iran-contra affair. And, this view of Presidential power has been carried on by the current Bush administration, claiming in Presidential signing statements, that the President can ignore antitorture legislation overwhelmingly passed here in Congress. Not only is the substance of that message incredible, but the idea that the President can somehow alter congressional intent—the meaning of legislation agreed upon by 100 Senators—with a single flick of a pen is absolutely ludicrous. It turns the meaning of legislative intent on its head.

In the hearings, Judge Alito attempted to downplay the significance of this theory by saying it did not address the scope of the power of the executive branch, but rather, addressed the question of who controls the executive branch. Don't be fooled by that explanation. The unitary executive theory has everything to do with the scope of executive power.

In fact, even Stephen Calabresi, one of the fathers of the theory, has stated that ''[t]he practical consequence of this theory is dramatic.'' It is just common sense that if the unitary executive theory means that the President can ignore laws that Congress passes, it necessarily expands the scope of Presidential power—and reduces the scope of Congress.

Judge Alito had numerous opportunities in the hearings to define the limits of the unitary executive, but he refused to answer my colleagues' questions. He didn't answer when Senator LEAHY asked him whether it would be constitutional for the Congress to prohibit Americans from using torture. He didn't answer when Senator DURBIN asked whether he shared Justice Thomas's view that a wartime President has inherent powers—beyond those explicitly given to Congress. He didn't answer when Senator FEINGOLD asked what, if any, limits there are on the President's power.

We all understand that under article II, the President has primary responsibility for the conduct of foreign affairs. But, the idea that the President can simply disregard existing law or redefine statutory limits at will in the areas of foreign affairs, national security, and war is a startling one. And it is one that I cannot accept.

We needed to know what limits Judge Alito would place on the executive branch. We needed him to go beyond simple recitations of Supreme Court case law. We needed to know what he actually thought.

Sadly, however, Judge Alito did not give us those answers. In fact, he failed to give us answers on many questions of critical importance. He refused to answer questions from Senator LEAHY, Senator KENNEDY, Senator FEINGOLD, and Senator BIDEN on the question of the power of the presidency. He refused to answer questions from Senator SCHUMER, Senator DURBIN, and Senator FEINSTEIN on whether Roe v. Wade was settled law—an answer that even Chief Justice Roberts was willing to give. He refused to answer Senator LEAHY's questions on court stripping; Senator LEAHY's and Senator FEINSTEIN's questions on congressional power and the commerce clause; Senator FEINGOLD's questions on affirmative action and criminal law; Senator SCHUMER's questions on immigration.

These are all questions about issues that routinely come before the Court. Judge Alito had an obligation to answer them. He had an obligation to explain and clarify the positions he took in his speeches, judicial opinions, and Justice Department memoranda. But he did not.

Why are we supposed to think that is OK? Since when is it acceptable to secure a lifetime appointment to the Supreme Court by hiding behind a smokescreen of nonanswers?

I understand that, for many, voting for cloture on a judicial nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some of you, a nomination must be an ''extraordinary circumstance'' in order to justify that vote. I believe this nomination is an extraordinary circumstance. What could possibly be more important than this?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard by a jury. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law under the guise of protecting our national security. Not after he shifts the ideological balance of the Court far to the right.

As I have said before, Judge Alito's nomination was a direct result of the rightwing's vehement attacks on Harriet Miers, an accomplished lawyer whose only failing was the absence of an ideologically bent record. The rightwing didn't wait for the next nominee. The rightwing didn't leave any of the tools in their arsenal unused. The rightwing attacked with every option available to them to prevent Harriet Miers' confirmation, secure in their conviction that it was the right thing for them to do.

We believe no less. And we should do no less. We did allow the confirmation of three of the most objectionable appellate court nominees. There was no talk of prolonged debate on Chief Justice Roberts. Now we are presented with a nominee whose record raises serious doubt about serious questions that will have a profound impact on everyday lives of Americans. What on Earth are we waiting for?

Many on my side oppose this nomination. They say they understand the threat he poses, but they argue that cloture is different. I don't believe it is. It is the only way that those of us in the minority have a voice in this debate. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can stop a confirmation that we feel certain will cause irreversible damage to our country.

I will oppose cloture on the nomination of Judge Alito. And, I sincerely hope my colleagues will join me.

The PRESIDING OFFICER. The assistant majority leader is recognized.

Mr. MCCONNELL. Mr. President, I rise today in support of the nomination of Samuel A. Alito, Jr., to be an Associate Justice of the Supreme Court. We are familiar with Judge Alito's academic and professional qualifications. He graduated from Princeton and Yale Law School, where he served as editor of its prestigious Law Journal. He spent his life serving his country as a captain in the Army Reserve, as an assistant, and then as U.S. attorney in New Jersey, and for the past 15 years as a distinguished judge on the Third Circuit Court of Appeals, to name a few of his qualifications with which we are all quite familiar at this point in the process.

Equally important is his deserved reputation for fairness and for integrity and his measured approach to the

law. The American Bar Association, hardly a bastion of conservatism, found this out during its exhaustive review of its record. The ABA solicited the views of 2,000 people, including 130 Federal judges and every Supreme Court Justice. After that, the ABA awarded Judge Alito its highest rating, unanimously well qualified. What that means is that every member of the committee of the ABA gave Judge Alito the highest possible mark. It is like getting straight A+'s on your report card.

Let me repeat that since some who are watching and listening have undoubtedly heard the attacks by Judge Alito's most vociferous opponents: The ABA, the largest professional association of lawyers in the country, found Judge Alito to be unanimously well qualified for the Supreme Court. In the past, this rating was referred to by our friends on the other side of the aisle as the gold standard.

More insightful than the ABA's rating is the testimonials of those who know Judge Alito best, his colleagues and his coworkers. Although they possess different political philosophies, Judge Alito's colleagues enthusiastically praise him as ''thoughtful, intelligent, and fair'' and a judge who ''has a great respect for precedent-setting decisions.'' To most people, that sounds like the kind of Justice we would want on the Supreme Court.

Judge Timothy Lewis served with Judge Alito for 7 years during which Judge Lewis typically voted with the court's liberal members. He recounted how when he joined the Third Circuit in 1992 he consulted his mentor, the late Judge A. Leon Higginbotham, Jr., who was a Carter appointee, a former chief judge of the court and a scholar of U.S. racial history. According to Judge Lewis, Judge Higginbotham said:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda. He is not an ideologue.

That is the late Judge Leon Higginbotham. Judge Lewis added his own experience bore out Judge Higginbotham's evaluation. Judge Lewis said Sam Alito ''does not have an agenda'' and ''is not result-oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.'' He ''faithfully showed a deference and deep respect for precedent.''

That is liberal Judge Lewis of the Third Circuit.

Another former chief judge of the Third Circuit, Edward Becker, similarly praised Judge Alito. Here is what he had to say:

> I found him to be a guy who approached every case with an open mind. I never found him to have an agenda. I suppose the best example of this is in the area of criminal procedure. He was a former U.S. attorney, but he never came to a case with a bias in favor of the prosecution. If there was an error in the trial, or a flawed search, he would vote to reverse.

Judge Becker noted that Judge Alito is ''very principled, very analytical, never decides more than he has to in a case. He does believe in judicial restraint in the way he writes opinions, with no ideological overtones.''

The Third Circuit current chief judge, Anthony Scirica, succinctly said:

> . . . whatever quality you think a judge ought to have, whether it's scholarship or an ability to deliberate, or fairness or temperance, Sam has each one of these to the highest degree.

That is the current chief judge of the Third Circuit.

These reflections, which include three former or current chief judges of the Third Circuit, are echoed by Judge Alito's former law clerks, many of whom are self-described committed Democrats. Jeff Wasserstein clerked for Judge Alito in 1998. Here is what he had to say:

> I am a Democrat who always votes Democratic, except when I vote for a green candidate—but Judge Alito was not interested in the ideology of his clerks. He didn't decide cases based on ideology.

Mr. Wasserstein recounts how in one criminal case the defense attorney had submitted a sloppy brief while the prosecutor had submitted a neat, presentable brief. Mr. Wasserstein says that in his youth and naivete he suggested to Judge Alito it would be easy to decide the case for the Government. But Judge Alito stopped him ''cold by saying that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant had received a fair hearing.''

Mr. Wasserstein's simple anecdote illustrates how Judge Alito approaches each case fairly and with an open mind. He observes that Judge Alito has a ''restrained approach to the law.''

Another former law clerk, Kate Pringle, who worked for Senator KERRY, whom we heard speak a few moments ago, for his Presidential campaign, describes herself as a left-leaning Democrat and a big fan of Judge Alito's. She rejects the notion that Judge Alito is an ideologue, stating he ''pays attention to the facts of the cases and applies the law in a careful way. He is a conservative in that sense. His opinions don't demonstrate an ideological slant.''

That is Kate Pringle, law clerk of Judge Alito and Kerry supporter for President in 2004.

In light of the accolades from those who know him best, in light of his brilliant academic and professional achievement, in light of receiving the highest possible rating by America's largest association of his peers, the ABA, I was hopeful the Senate would provide Judge Alito with a fair and dignified process. Sadly, this has not been the case.

In the Senate we have known for over 200 years, a judicial nominee with Judge Alito's character, ability, and achievement would command a large bipartisan majority of support. Now it appears Judge Alito will not get that tomorrow. Why is that? It is because there has been a change in the standards by which the Senate considers qualified judicial nominees. In my view, it has not been a change for the better.

According to the New York Times, in early 2001, some of our Democratic colleagues attended a retreat where law professors such as Larry Tribe and Cass Sunstein implored them to ''change the ground rules'' with respect to how the Senate considered judicial nominees by injecting a political ideology test into the confirmation process. Soon after that meeting, some of our friends initiated a premeditated and sustained effort of serial filibusters of circuit court nominees. We saw a lot them. Those most passionate for this tactic thereby wrote a new and sad chapter into the pages of Senate history.

Like many Republicans and Democrats, I had hoped this sad chapter of trying to deny judicial nominees a simple up-or-down vote would recede into memory as a mere footnote in a long and proud history of the Senate. Unfortunately, today some are trying to revive it with the Alito nomination.

We stand today on the brink of a new and reckless effort by a few to deny the rights of many to exercise our constitutional duty to advise and consent, to give this man the simple up-or-down vote he deserves. The Senate should repudiate this tactic, and it will have an opportunity to do that at 4:30 this afternoon.

There is a role for the filibuster for legislative matters. Although I may disagree with its application in a particular legislative case, I neither deny the tactic nor begrudge it when a colleague employs that tactic when there is good reason to do so. I have done so on many occasions myself. I have not seen a good reason for employing it in the context of judicial nominations. Nor did any Senate prior to the last Congress find that tactic should be employed for judicial nominations.

It certainly is not warranted in the case of Judge Alito. He is clearly qualified. His friends, his peers, and, indeed, his entire life story tell us so.

During his hearings and despite the best efforts of those opposed to his nomination, he acquitted himself admirably. Over 18 hours of testimony he was asked 677 questions and was able to answer 659 of them—truly an impressive feat. In doing so, Judge Alito demonstrated an impressive command of the law and a model judicial temperament.

Now, while Judge Alito conducted himself with grace and dignity, unfortunately, some Senators did not. In fact, those who listened most attentively to the outside pressure groups, such as one whose top lobbyist declared ''you name it, we'll do it to defeat Judge Alito,'' could have learned a thing or two about grace and dignity

by watching Judge Alito perform in the face of the most absurd and baseless charges.

Despite the repeated efforts to caricature Judge Alito, the public's support for him only increased. After the hearing, the only thing the American public was concerned about with respect to Judge Alito was the sometimes shabby treatment he received.

With Stephen Breyer and Ruth Bader Ginsburg, Republicans resisted playing base politics and instead measured those two nominees by the traditional confirmation standard of integrity and legal excellence and not a political ideology standard. We did not grandstand on the colorful—to put it delicately—statements Justice Ginsburg had made decades before her nomination such as possibly abolishing Mother's Day and Father's Day and statements about purported constitutional rights to prostitution and polygamy, to name a few. Nor did Republicans seek to disqualify Judge Ginsburg from further judicial service because of her longstanding leadership of the ACLU and the controversial positions it often takes.

And Republicans did not succumb to the idea of a reckless filibuster to gain the approbation of a newspaper or an interest group.

If Republicans had wanted to demagogue and defeat the Ginsburg nomination, we could have done the things to Justice Ginsburg that have been done to Judge Alito. In fact, with her highly controversial writings and advocacy for the ACLU, it would have been a lot easier to do so, but we exercised self-restraint and self-discipline for the good of the country.

In conclusion, I implore my Democratic friends to consider that to engage in these tactics is neither fair nor right. If this hyperpoliticization of the judicial confirmation process continues, I fear in this moment we will have institutionalized this behavior, and some day we will be hard pressed not to employ political tests and tactics against a Supreme Court nominee of a Democratic President. In that case, no one—Republican or Democrat—will have won.

I urge my colleagues to desist in this tactic of turning the confirmation process of a judge into the functional equivalent of a political campaign. It is shortsighted, and we will mourn the day this tactic became the norm.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, the Committee on the Judiciary has recommended that we consent to the President's nomination of Samuel A. Alito, Jr. as Associate Justice of the Supreme Court of the United States. I concur in that recommendation. I am convinced that Judge Alito will make an outstanding addition to the Supreme Court and will be faithful to his judicial oath in neutrally applying the law without imposing his personal, political or ideological views to circumvent the law or the Constitution.

First, I wish to commend Chairman SPECTER and my former colleagues on the Judiciary Committee—including the Presiding Officer—for conducting nomination hearings which established clearly Judge Alito's fitness to serve on the Nation's highest Court. I followed closely Judge Alito's responses to questions during the hearings. I was impressed by his profound patience, sincerity, and dedication to the ethical restraints which compel all nominees to refrain from prejudicing any matter which may come before the court. Many of my colleagues have complained that Judge Alito ''did not answer some questions.'' Their real complaint rather, is that they simply didn't like his answers. Judge Alito quite properly declined, as have all prior nominees to the Court, to address in advance specific matters which may come before them. As Judge Alito stated:

> If a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that's not the way in which members of the judiciary are supposed to go about the work of deciding cases.

That statement, and the time-honored concept which it embodies, is profoundly important. Surely, those of my colleagues who have criticized Judge Alito in this regard know better. Surely, they do not want Justices on the Court to signal in advance how they will rule on cases. To the extent they do, they will be judged by the American people as perverting our constitutional system itself.

Others have criticized Judge Alito because he may hold personal, political, or ideological views. We all hold personal views. But the role of a judge, unlike that of a legislator, is to apply the law without respect to his or her personal, political, or ideological views. Judge Alito has demonstrated not only his ability to do this during 15 years of service as a judge on the United States Court of Appeals for the Third Circuit, but his commitment to this principle in responding to questions during his confirmation hearings.

Fidelity to the Constitution and commitment to the rule of law without respect to one's personal views is, at the end of the day, the only principle that provides legitimacy to the Federal judiciary—the only unelected branch of our government. The unelected status of the judiciary was, correctly, viewed with particular suspicion by the Founders, lest that unique status permit judges to impose their own views under the guise of judicial decisions, without direct accountability to the American people. In a letter to Spencer Roan, March 9, 1821, Jefferson stated:

> The great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, [is] gaining ground step by step. . . . Let the eye of vigilance never be closed.

And so that vigilance now rests upon this body. Let us be vigilant in insisting that justices of the Supreme Court, and all other Federal judges who are presented to us, are sufficiently committed to the rule of law.

As I noted during my remarks concerning the nomination of Chief Justice Roberts at a time when too many of those in the judicial branch have sought to use their lifetime tenured position to advance their own personal, ideological, or political preferences in deciding matters which come before them; at a time when too many within the legal, media and political elites have sought to recast the role of the judiciary into a superlegislature, approving of, and even urging judges to supplant their views for those of the elected representatives of the American people—we should be reminded that such actions and such views on the part of some are anticonstitutional and contrary to the rule of law itself.

Describing his own fidelity to the Constitution and to the rule of law, Judge Alito told the Committee on the Judiciary:

> A judge can't have an agenda. A judge can't have a preferred outcome in any particular case. And a judge certainly doesn't have a client. A judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

The standard for rendering advice and consent, which I outlined in my statement concerning Chief Justice Roberts, is the standard I will apply to Judge Alito as well. That standard—demonstrated commitment to the rule of law and fidelity to the Constitution—is amply met by Samuel A. Alito, Jr. I am pleased to support his nomination and will certainly vote to confirm him as Associate Justice of the Supreme Court. I urge my colleagues to do likewise.

Make no mistake about it. The American people do not want to see an obstructionist attitude in their legislative body. The American people are not benefited by an obstructionist attitude. An obstructionist attitude towards Judge Alito means not moving forward with affirming a cloture vote and then confirming Alito to be Associate Justice of the Supreme Court. The American people are best served by a bipartisan attitude in this body. I hope when the cloture vote is made at 4:30 we will see not just the 60 votes needed to not allow a filibuster but that we will see a strong bipartisan vote in support of moving ahead with giving Judge Alito an up-or-down vote on the floor of the

Senate. And tomorrow morning, when we consider the confirmation of Judge Alito, I certainly hope that once again we will see a strong bipartisan vote confirming Judge Alito as the next Associate Justice of the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time does the Senator from New Mexico have allotted?

The PRESIDING OFFICER. The majority controls the time until 2 p.m.

Mr. DOMENICI. I yield myself the time until 5 minutes of 2, and I ask unanimous consent that Senator ALEXANDER and I be permitted to use 5 minutes of that time to speak to an unrelated subject.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROTECTING AMERICA'S COMPETITIVE EDGE

Mr. DOMENICI. Mr. President, today I rise to speak about a very important issue, the competitiveness of the United States and our future standard of living and whether we are going to develop the brainpower in America to meet the challenges of the future.

I compliment two Senators who initiated this endeavor—LAMAR ALEXANDER of Tennessee and JEFF BINGAMAN of New Mexico. They asked me, as chairman of the Energy Committee, if they could pursue a study with recommendations about how to achieve competitiveness. They did that. Now we have the results of that evaluation in a major report hereinafter to be called the Augustine report, named after Dr. Augustine, former president of Lockheed Martin. Many people know of him in many capacities. That report recommends 20 specific ideas to get America back on the track of competitiveness in the world.

Today I want to tell Senators and the world that in a day of confrontation and partisanship the implementation of that study is encapsulated in three bills. The bills now have 53 cosponsors. Of those, 29 are Republicans, 24 are Democrats. The bills are S. 2197, S. 2198, and S. 2199. Three Senators of the 23 have cosponsored only one portion.

At this early date, to have that many cosponsors is rather historic. This means we are going to proceed with the legislation. I am going to yield some time now to the distinguished Senator from Tennessee, closing by saying that the essence of this report says: America, produce better brainpower in math, science, and physics; produce more engineers of all types; produce more research in basic science; cause business to invest through tax credits—and do it as soon as possible. Without this, the report says, we will perish.

Lastly, I want my friend from Tennessee to listen to just one fact. We have at various times attempted to equate what we do with what we ought to do. Jeffrey Immelt, CEO of GE, recently shocked a DC audience with a troubling statistic. He said:

> If you want good manufacturing jobs, one thing you could do is educate more engineers. We had more sports exercise majors graduate than electrical engineering majors last year.

Based on that statistic, he added:

> If you want to be the massage capital of the world, you are well on your way.

That is very interesting. With that, out of my time, I yield to the Senator from Tennessee 3 or 4 minutes to speak to this bill, which is called the PACE legislation.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I thank the Senator from New Mexico. First, there is nothing more important, along with the war on terror, than finding a way to keep our jobs from going to China, India, and other countries around the world. They have figured out how to increase their standard of living, and it has to do with brainpower.

What I want to say today is, first, I congratulate Senator DOMENICI, without whose leadership this would not have gotten to first base. He encouraged Senator BINGAMAN and I to go to work. He got our meeting with the President. It was he who presided over our homework sessions with the administration. It is he who has taken the leadership with Senator BINGAMAN on this bill to have 55 cosponsors prior to the President's speech tomorrow night. So I thank him first.

Second, I reiterate where this idea came from. It came not from Senators, not from lobbyists, nor from this or that clique. Senator BINGAMAN and I asked the people who should know—the experts at the National Academies—sthe answer to this question: exactly what do we need to do to keep our advantage in science and technology over the next 10 years so we can keep our jobs? They answered that question with 20 specific recommendations involving kindergarten through the 12th grade education, higher education, basic research, maintaining an entrepreneurial environment. These are ideas that many Senators on both sides of the aisle have advocated for several years, but the fact that the National Academy of Sciences, the Institute of Medicine, and the National Academy of Engineering joined together to say ''here is the blueprint'' is the reason this idea has gone so far. What it does is help keep our edge in science and technology.

I am looking forward to the President's remarks tomorrow night. It is my hope that he makes the Augustine report and the whole idea of keeping America on top and keeping our edge in science and technology a focus of his speech and of his next 3 years.

So it is my privilege today to ask unanimous consent on behalf of Senators DOMENICI, BINGAMAN, and myself to add as cosponsors Senators LAUTENBERG, JOHNSON, MCCONNELL, SNOWE, and now Senator SPECTER of Pennsylvania, who have asked to be added to S. 2197, S. 2198, and S. 2199 as cosponsors, as well as Senator REED of Rhode Island who has asked to be added as a cosponsor of S. 2197, so that we now have 54 cosponsors of these important pieces of legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a letter from Senator BINGAMAN and myself, encouraged by Senator DOMENICI, to the National Academy of Sciences on May 27, 2005, and a two-page summary of the Domenici-Bingaman-Alexander-Mikulski legislation, which has 54 cosponsors, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, May 27, 2005.

Dr. BRUCE ALBERTS,
President, National Academy of Sciences, Washington, DC.

DEAR DR. ALBERTS: The Energy Subcommittee of the Senate Energy and Natural Resources Committee has been given the latitude by Chairman Pete Domenici to hold a series of hearings to identify specific steps our government should take to ensure the preeminence of America's scientific and technological enterprise.

The National Academies could provide critical assistance in this effort by assembling some of the best minds in the scientific and technical community to identify the most urgent challenges the United States faces in maintaining leadership in key areas of science and technology. Specifically, we would appreciate a report from the National Academies by September 2005 that addresses the following:

Is it essential for the United States to be at the forefront of research in broad areas of science and engineering? How does this leadership translate into concrete benefits as evidenced by the competitiveness of American businesses and an ability to meet key goals such as strengthening national security and homeland security, improving health, protecting the environment, and reducing dependence on imported oil?

What specific steps are needed to ensure that the United States maintains its leadership in science and engineering to enable us to successfully compete, prosper, and be secure in the global community of the 21st century? How can we determine whether total federal research investment is adequate, whether it is properly balanced among research disciplines (considering both traditional research areas and new multidisciplinary fields such as nanotechnology), and between basic and applied research?

How do we ensure that the United States remains at the epicenter of the ongoing revolution in research and innovation that is driving 21st century economies? How can we assure investors that America is the preferred site for investments in new or expanded businesses that create the best jobs and provide the best services?

How can we ensure that critical discoveries across all the scientific disciplines are predominantly American and exploited first by firms producing and hiring in America? How can we best encourage domestic firms to invest in invention and innovation to meet new global competition and how can public research investments best supplement these private sector investments?

What specific steps are needed to develop a well-educated workforce able to successfully embrace the rapid pace of technological change?

Your answers to these questions will help Congress design effective programs to ensure that America remains at the forefront of scientific capability, thereby enhancing our ability to shape and improve our nation's future.

We look forward to reviewing the results of your efforts.

Sincerely,

LAMAR ALEXANDER,
Chairman, Energy Subcommittee.
JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources.

PACE ACT: PROTECTING AMERICA'S COMPETITIVE EDGE

Focuses on keeping America's science and technology edge—as much as 85 percent of our per capita growth in incomes since World War II has come from science and technology.

Helps America continue to set the PACE in the competitive world marketplace.

Keeps our brainpower edge by strengthening K–12 math and science education, attracting bright college students to the sciences and investing in basic research.

In a package of three bills, the PACE Act implements 20 recommendations contained in an October report by the National Academy of Science titled ''Rising Above the Gathering Storm.''

Protecting America's Competitive Edge through Energy Act (PACE-Energy): Increasing our investment in energy research and in educating future American scientists.

Protecting America's Competitive Edge through Education and Research (PACE-Education): Investing in current and future math and science teachers and K–12 students, attracting bright international students, and investing in non-energy related basic research.

Protecting America's Competitive Edge through Tax Incentives (PACE-Finance): Doubling the research & development tax credit and allowing a credit for employee education.

KEY PROVISIONS OF THE PACE ACTS

Strengthening the nation's traditional commitment to research

More research opportunities for scientists and engineers: Increases basic research spending by up to 10 percent per year for seven years at several federal agencies, including the national laboratories. This investment would generate hundreds, maybe thousands, of new inventions and high-tech companies.

Targeted research grants for early career scientists and engineers: Creates a special research fund for 200 outstanding young researchers across the nation each year.

New federal funds to buy equipment and upgrade research laboratories: Provides a special pool of funds for the nation's research infrastructure to purchase updated research equipment and upgrade lab capabilities.

A New Agency for Transformational Energy Research: Establishes a new research agency within the Department of Energy tasked with developing transformational energy technologies that bridge the gap between scientific discovery and new energy innovations. This agency would be patterned on the management practices of a Pentagon research agency (DARPA) that contributed to innovations like the Internet, stealth technology and global positioning systems.

High-Risk, High-Payoff Research: Directs federal research agencies to develop guidelines that allow eight percent of R&D budgets to be devoted to high-risk, high-payoff research which falls outside the peer review and budget allocation process.

Improving K–12 Science/Math Education

Scholarships for Future Teachers of Math & Science: Each year, up to 10,000 bright students would receive a 4-year scholarship to earn a bachelor's degree in science, engineering or math, while concurrently earning teacher certification. In exchange for these scholarships, they would be expected to serve for at least four years as a math or science teacher.

Math & Science Teacher Training Programs: Funds part of the costs for new math and science teacher training programs based in math and science departments at universities across the country. These programs will stress a solid content knowledge of their subject while also providing the training necessary for teacher certification.

Summer Academies for Teachers: National laboratories and universities across the country would host 1–2 week academies each summer for up to 50,000 math and science teachers so they can get some hands-on experience and take back new, improved ideas for energizing their students.

Advanced Placement Courses in Math & Science: The federal government would provide funding to help establish non-profit organizations to promote Advanced Placement (AP) classes in math and science—tripling the number of students who could join these college-preparatory programs that consistently produce the highest achievers.

Specialty Math & Science High Schools: States would be eligible to apply for a grant from the federal government to help establish a new high school specializing in math and science that students from across each state could attend.

Internships and Summer Programs for Middle and High School Students: Provides unique internship and program opportunities for middle and high school students at national labs and other technology and scientific research facilities.

Increasing the Talent Pool by Improving Higher Education

Scholarships and Fellowships for Future Scientists: Each year, up to 25,000 bright young Americans would receive a 4-year competitive scholarship to earn a bachelor's degree in science, engineering or math, so that our brightest students pursue studies in these fields which are so critical to our economic growth. Up to 5,000 students who have already earned their bachelor's degree, would compete to receive graduate research fellowships to cover education costs and provide a stipend.

Attracting the Brightest Foreign Students to our Universities: Provides an efficient student visa process for bright foreign students to come here to study math, technology, engineering and science and then to stay here—contributing to our economic growth rather than being forced by an outdated immigration system to go home and produce the best new technology in India or China.

Growing our Economy by Providing Incentives for Innovation

Doubling the Research & Development Tax Credit to Encourage Innovation: Doubles the current R&D tax credit and makes it permanent—so companies conduct ground-breaking, job-producing research here, rather than building new facilities overseas.

Creating a Tax Credit to Encourage Employers to Invest in Employees' Education: Establishes a new tax credit to cover costs from providing continuing education to employees—so employees can learn cutting-edge skills.

Development of Science Parks: Supports the development of science parks through infrastructure planning grants and loan guarantees so that U.S. science parks are competitive with those throughout Asia.

Mr. DOMENICI. Mr. President, let me say what a privilege it is today to speak once again to the nomination of a Supreme Court Justice and to the advice and consent function of the Senate.

I came here in 1972, so there have been a lot of men and women nominated to the Supreme Court of the United States. In my time here, I have voted to confirm them all. I based my vote, first, on the fact that the President of the United States recommended them and second, on whether they were qualified. I determined whether they were qualified based upon outside evaluations and personal observations of those who knew, trained and taught that particular nominee. For example, I found Justices Ginsburg and Breyer, who were confirmed 96-to-3 and 87-to-9, to be qualified. In my opinion, neither of those judges, based upon the way the Senate is doing things these days, would have come close to getting those kinds of votes. As a matter of fact, for those who threaten filibuster, I believe there is a serious question.

If filibusters would have been the rule of the day, at least one of those nominees might very well have been filibustered, and the filibuster might have been successful. But that wasn't the way things were done.

Qualification was the question upon which we based our decisions; that has changed. Rancor has taken the place of reason. Partisanship has taken the place of responsibility and fairness. At every step of the process with this nominee, the American people have seen what a confirmation process can turn into if it is not vested and fair, but is instead full of what can be considered as almost hatred, almost fire and brimstone. Our colleagues have focused on the negatives of everything, however small or irrelevant. Currently, the trend is not to do what we have done, which has resulted in some great judges, but rather to be fed by the flames of partisan special interests that want assurances—they want guarantees.

I personally believe this is a dangerous course, and I hope and pray that this will be the last time we follow such procedure. But I doubt that it will be, although I believe such actions are wrong. Rejecting the judicial philosophy tests being urged by some is absolutely imperative.

When we apply the appropriate test of qualification, there is no doubt that Judge Alito is qualified. He is qualified to be a Supreme Court Justice. The American public realizes this and that is why they overwhelmingly indicate that we should get on with this and vote. It is clear that there has been no nominee—and the occupant of the chair has seen many—that has spread before the eyes of the Congress and the public more about themselves, their record, their philosophy, their vote,

their rationale, and their ethics than this man.

The President, indeed, took a big chance with this nomination because to have that much of a record and have a vote and all that goes with it here was, indeed, a giant risk. But it paid off because Judge Alito is what he purported to be—a scholarly, terrific judge, who is without any question, distinguished.

My second point concerns ''guarantees.'' I believe some members of the Judiciary Committee questioned this judge in an effort to get some guarantees about how he would vote. It is amazing to consider some of the Supreme Court Justices who have been approved by the Senate based on their testimony and their record, which were presumed to be commitments or guarantees as to how they would vote. We can look back to Justice Warren from California as well as two or three members of the Court right now. Those who voted for such judges could have, indeed, thought they were getting guarantees, and it has turned out not to be the case. Those judges' philosophy, their votes, and everything else has been different on the Court than what they appeared to be guaranteeing during the confirmation process.

There are no guarantees. Those who are making this a partisan fight won't say: We don't have any guarantees, on Roe v. Wade and many other issues, that Judge Alito will vote the way we want him to—they won't say they are doing that. They will use other words like ''I am bothered,'' but that is really their argument.

Now, as to the cloture vote this afternoon—we are going to do that. I have never had to make that vote in 34 years—on 11 Supreme Court nominees. I never had to make that vote. Why? Because this Senate has not used the filibuster on Supreme Court Justices. Some people say, oh, yes we have, or, yes, we almost did. But we did not, and we surely didn't when a majority was for the man or woman. That is the case here.

To have to take this route, I believe the process is headed in the wrong direction. To require cloture is not the way to do it. It is not in tune with the history of the Senate. It contradicts the significance of this body as a fairminded, deliberative body. I regret to say that with no particular people in mind. If the shoe fits, fine. If it fits no one, fine. But this has turned into nothing more than a political war. Those who are going to vote to continue debate, many of them know that this man is as qualified as anyone we are going to get. He is as assured to make as good of decisions on behalf of the American people as anyone we are going to get. And he is equally as assured to vote different than many of us who will vote for or against him expect. Of that, I have no doubt.

I regret that it has taken us so long to confirm Judge Alito. I regret that it has turned into the spectacle that it has. But perhaps today we will invoke cloture, change things from where they are to where they should be, and with an up-or-down vote tomorrow, this deserving, honest, well-informed, good man will be confirmed.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, the Presiding Officer knows that I don't always agree with him or he with me, but in response to the Senator from New Mexico about the process here, the Presiding Officer was exemplary in how Justice Breyer and Justice Ginsburg were chosen to be members of the Supreme Court. There have been books written about it and chapters of books written about it.

The Presiding Officer, as chairman of the Judiciary Committee, in communication with President Clinton, said: I don't like this person, this person, this person. And so there was a process set up, nonpublic in nature, where the chairman of the Judiciary Committee conferred with the President and his people and waded through lots of names that, in the judgment of the distinguished Senator from Utah, were not appropriate. Now we have two Members on the Supreme Court whom I think have distinguished themselves.

I wish we could have a procedure like that in the future. I think, I repeat, it was exemplary. That is the way things used to be done. I would hope in the future that the President's men and women would be willing to meet with their counterparts in the Senate and come up with a procedure that is somewhat along the lines of the distinguished Senator from Utah. I would hope that would be the case.

The hearings of Ginsburg and Breyer were short and directly to the point. I hope in the future we can do more of that. I extend my applause and congratulations to the Senator from Utah. No matter what happens in the future regarding the long career of the Senator from Utah in the Senate, this, as far as I am concerned, will be an important chapter in his public service.

THE PRESIDENT'S STATE OF THE UNION MESSAGE

Mr. President, tomorrow night, the President of the United States will come to the Capitol and deliver his fifth State of the Union Address. This is an important moment for the President and for the country. Some say, reading the op-eds over the last week or so, this may be the most difficult speech the President will ever give.

The President comes to the Capitol in the midst of also what some write about as the greatest culture of corruption since Watergate. Public trust has dropped significantly in this culture in Washington, and I need not run through all the problems, but I will run through some of them.

The majority leader in the House of Representatives was convicted three times of ethics violations. They even went so far as to change the rules so he could stay in his position after having been indicted. They changed the rules back because the hue and cry of the American people was so intense.

For the first time in 135 years, someone is indicted working in the White House. Mr. Safavian, appointed by the President to handle Government contracting—hundreds of billions of dollars a year—is led away from his office in handcuffs as a result of his dealings with Jack Abramoff and others.

So I think in his speech, the President is obligated to the American people to show that he is committed to restoring the bonds of trust and repairing the damage done by this corruption.

Americans know the country can do better today, and after the year we had, a year of trying to privatize Social Security, Katrina, failures in Iraq, Terri Schiavo, and a heavy heart I have, Mr. President, as a result of how a good woman was—I would not say destroyed because she was not; she is stronger than that. But Harriet Miers, how she was treated is unbelievable. A good woman was treated so poorly, and the people who tried to destroy her are the ones being rewarded now with the Alito nomination. Then, of course, this past year we had Medicare prescription drugs come into being, which is a puzzle that no one can figure out.

So the American people, after this year we have had, simply will no longer be able to blindly accept the President's promises and give him the benefit of the doubt.

Americans will be looking past his rhetoric tomorrow night and taking a hard look at the results he intends to deliver. The President's State of the Union Message is a credibility test. Will he acknowledge the real state of our Union and offer to take our country down a path that unites us and makes us stronger, or will he give us more of the same empty promises and partisanship that has weakened our country and divided Americans for the last 5 years?

If he takes the first approach, together, Democrats and Republicans can build a stronger America. If he gives us more of the same empty promises and Orwellian doublespeak, we know he intends to spend 2006 putting his political fortunes ahead of America's fortunes. We need a fresh start, and I hope President Bush realizes that tomorrow night.

There is much more at stake in his speech than poll numbers. Empty promises will no longer work. We need a credible roadmap for our future, and we need the President to tell us how together we can achieve the better America we all deserve.

Our first signal that the President intends to move our country forward will come in his assessment of the state of our Union. It is not credible for the President to suggest the state of the Union is as strong as it should be. The fact is, America can do much better. From health care to national security,

this Republican corruption in Washington has taken its toll on our country. We can see it in the state of our Union.

What is the state of our Union? The state of our Union is that we are less safe in this world than we were 4½ years ago because the White House has decided protecting its political power is more important than protecting the American people.

We are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? Frankly, we are not because this administration decided to take care of the big pharmaceutical companies, the drug companies, the HMOs, managed care, instead of 46 million uninsured.

We have a national debt climbing past $8 trillion. I have a letter I received a short time ago from the Secretary of the Treasury saying the debt is at $8.2 trillion and we need to raise it more. Over $9 trillion is what they are asking because the President squandered the strongest economy in the history of this country with reckless spending and irresponsible tax breaks for special interests and multimillionaires.

We have an addiction to foreign oil that has climbed steadily over the last 4 years and doubled the price of heat for our homes and gas for our cars because the Vice President let big oil companies write our energy policy. And we have too many middle-class families living literally on the financial cliff. All statistics show the rich are getting richer, the poor are getting poorer, and the middle class is squeezing smaller and smaller all the time.

The economic policies of this administration over 5 years has placed the needs of the wealthy and well connected ahead of working Americans.

If President Bush is committed to making America stronger, he will acknowledge these facts Tuesday night. He will admit the steep price Americans have paid for this corruption, and he will proceed to tell us how he can make our country stronger.

Our second clue that the President is committed to moving America forward will come in his remarks about national security. Tomorrow night, it is not credible for the President to tell us he has done all he can to keep Americans safe for the last 5 years. We know that because we have had vote after vote on the Senate floor to take care of our chemical plants, our nuclear power facilities, to check the cargo coming into this country, what is in the belly of that airplane in the cargo, and vote after vote, on a strictly party-line basis, we have lost.

For all of this tough talk, President Bush's policies have made America less safe. His failed record speaks for itself.

Osama bin Laden, the man who attacked us on 9/11, remains on the loose because, in his rush to invade Iraq, the President took his eye off the ball when we had him cornered in a place called Tora Bora, Afghanistan.

As a result, he is gone. We don't know where he is, and he continues to threaten us today in his taunting, vicious, evil manner.

Then there is the President's ''axis of evil.'' Four years ago, the President declared Iraq, Iran, and North Korea an ''axis of evil'' whose nuclear threats posed risk to the American people, and he was right. Well, mostly right. Instead of pursuing the correct policy to make it safer, he invaded Iraq. Now two members of the ''axis of evil''—North Korea and Iran—are more dangerous, and after spending billions of dollars and losing 2,300 American lives, we found out that the third, Iraq, didn't pose a nuclear threat at all.

Then there is what this President has done to our military. Not only has he failed to properly equip our troops for battle—we know the stories are all over the country about 80 percent of our people who have been injured—that is 18,000 and 2,300 dead—80 percent of them would have been hurt less, many lives would have been saved had they had the body armor that was available.

According to the Pentagon's independent studies, the Pentagon is stretched—stretched in a manner, as indicated in the paper today, as having mass advancements in rank, which they have never done before, because they are trying to keep people in the military, among other things. Our forces are stretched entirely too thin.

The President's poor planning and refusal to change course in Iraq has made progress in 2006 harder to achieve. He has made it more difficult to spread democracy around the world because he has been undermining it right here at home.

As Katrina made clear, he failed in the 4 years after 9/11 to prepare America for the threats we face. New Orleans could have been anyplace in America. The difference with Katrina is we had warning it was coming. But other threats, that won't be the case.

America can do better. Tomorrow night, the President needs to provide a new way forward. Partisan attacks will only divide us. What we need is for the President to rally the country around our most important goal: protecting our people and our way of life.

Democrats have always been willing to work with President Bush to make America more secure. We know our national security policy is not the place for political games. Democrats look forward to hearing how the Commander in Chief will govern and hope we have seen the swagger and partisanship of the ''campaigner in chief'' for the last time.

Our third signal that President Bush understands what it will take to make the State of the Union strong will come when he talks about health care. Again, we are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? We are not. Because of the President's inaction on health care over the last 5 years, America faces a health care crisis of staggering proportions. There are 46 million Americans with no health insurance and millions more who are underinsured.

The cost of health care premiums has doubled since 2001. Manufacturing giants, such as Ford and General Motors, are laying off tens of thousands of people for lots of reasons, but one reason is health care costs have skyrocketed.

With a record such as that, it is not credible for the President to claim he has a vision to make health care affordable. He needs to present us new ideas that will move America forward, not trot out the same tired old policies that serve special interests and not the American people. Press reports, I fear, indicate we are in for the same old tired ideas. It is rumored that President Bush will again focus on something called health savings accounts.

This administration has taught me that what I learned in college studying George Orwell has some validity today. We have Orwellian doublespeak such as the Healthy Forests Initiative, one piece of legislation that was for clearcutting of trees and other things to make our forests less healthy; our Clear Skies Initiative, which polluted the skies; Leave No Child Behind, which is leaving children behind; and the Deficit Reduction Act of 2005. Talk about Orwellian doublespeak; using the President's own numbers, the Deficit Reduction Act increased the deficit by $50 billion.

Now he comes up with Health Savings Accounts. That is classic Bush doublespeak. It is not a credible solution to the health care crisis. This plan will force most Americans to spend more on health care while making it less available to millions of others. HSAs are nothing more than another giveaway to the same people the President has favored over hard-working Americans for the past 5 years. In fact, remember Social Security privatization? HSAs, or Health Savings Accounts, are a lot like that. They do nothing to solve the real problem. They make the situation worse for the American people and they create a financial windfall for the President's friends: HMOs, insurance companies and, of course, Wall Street, that will set up all these accounts.

We do not need the President to offer more of the same on health care. We saw with the President's Medicare prescription drug plan that his policies too often put special interests ahead of the American people. Ask any senior citizen today about how the Medicare plan has helped them. Even if they could work a crossword puzzle out of the New York Times on Sunday, which is the hardest, day after day after day, they still couldn't solve the Medicare Program of President Bush. It is impossible.

What we need is a new direction, one that puts families first. Democrats believe that addressing the health care crisis is not just a moral imperative, but it is also vital to our economic security and leadership in the world.

Every day we go without reform is another day America takes another step backward from a position as global leader.

For our families, we must make health care affordable and accessible. For our businesses, we must remove the burden of skyrocketing costs that is holding our businesses, our economy, and our workers back in the global marketplace.

Our fourth clue that the President knows what America needs will come in his remarks about the economy. After all we have seen in the past 5 years, it will not be credible for the President to claim our economy is growing, that his plan to reduce his deficits—and I say his deficits—is working, and that Congress is to blame for spending and bad decisions. The truth is, the fiscal nightmare we see today belongs to President Bush and President Bush alone.

I love to watch golf on TV. I know I am not like a lot of people, I should be watching football or basketball or something. I love to watch golf on TV. It is a game of chess. Yesterday, Tiger Woods—this guy is fantastic. He is seven strokes behind after the first day. He has a bad day yesterday and wins the tournament. He has a bad day and wins the tournament.

I mentioned records—he holds all kinds of records. That was the 47th tournament he won—quicker than anyone else, of course. He just turned 30 years old. He won the Buick Open four times. That is what he won yesterday. He holds record after record. I mention these records because President Bush holds all the records. The highest deficit, he holds them all. There is not a close second. He has them all.

It is not a record the American people envy, such as that of Tiger Woods. His financial record has bankrupted this country. We are going to be asked in a couple of days to increase the deficit ceiling—over $8.2 trillion.

Here is another doublespeak Orwell would be proud of we are likely to hear tomorrow night. I am sure we are going to talk about the Bush competitive agenda. The President can talk all he wants about making America competitive, but for 5 years he has done nothing to keep America in the game. From what we have read in the press, this plan sounds like more empty rhetoric from a President who has spent 5 years slashing the funding we need to stay on the cutting edge. He shut the doors to thousands of college students by supporting cuts in student aid. He has allowed our country to fall further behind our trading partners. It is no accident what is happening in South America. President Reagan, President Clinton, and the first President Bush worked hard to democratize Central and South America. These countries are losing their democracy edge because we have so neglected them.

He has lavished billions on big oil instead of investing in American technology and know-how to make us more energy independent. We need to hear new economic ideas tomorrow night. The President needs to tell us how he is going to begin paying down the debt, his debt, so our children and our grandchildren do not pay the price for his reckless fiscal record.

It is so startling to me that Republicans—when I started my political career, they were the ones concerned about deficits. They have created them. They don't complain about them. It is stunning to me. The President has not vetoed a single spending bill. Of course, he hasn't vetoed anything, but why should he? We don't have separate branches of Government while he is here; the Republican Congress does whatever he wants. Maybe beginning the sixth year that will not be the case.

We need the President to speak honestly about tax relief, about middle-class families and how they deal with these energy prices. The truth about the Bush tax cuts is multimillionaires stand, with his newest proposal, to get over $100,000 while the average working family will receive pennies on that. The President's priorities are upside down. It is time for him to join us and bring fairness to our Tax Code.

Democrats are ready to work with President Bush, but he needs to commit to policies that put the needs of hard-working Americans first. One final signal that President Bush is committed to making America stronger will come on the issue of reform. Because of connections to the culture of corruption and stonewalling about Jack Abramoff, it is not credible for President Bush to claim the moral high ground on values as an honest government. President Bush needs to set an example, if he is going to lead our country forward tomorrow night. He needs to come clean about his connections to corruption, with Abramoff—as Republicans have called for. HAGEL, THUNE—Republican Senators have called for this. Too many Republicans have shown in recent days that we are going to obscure the facts and move on.

There is legislation pending. We do not need a task force. We need Senators LIEBERMAN and COLLINS to go ahead with the hearings and decide what needs to be done. Our legislation may not be perfect, but it is legislation we need to start with.

It is Republicans who control the White House where men are willing to break the law and ignore America's best interests so they can protect their political power. Safavian, Libby, Rove—it is Republicans who control the Congress which sold its soul to special interests and a Republican right-wing base, a base that has its sights set on stacking our courts with extremist judges. They have acknowledged that. It has been K Street, the so-called K Street Project, that has conspired with lawmakers to put the well connected first, going so far as having them not hire Democrats to work as representatives.

We have a plan to reform Washington. We need to bring it to the Senate floor. We need to do that. President Bush has to join with us. Anything less, we will know the President has no interest in changing his ways and making America stronger.

The President faces a tremendous test tomorrow night. It is up to him to prove to the American people he intends to denounce the culture of corruption that has come to Washington since he arrived and change direction in 2006. Democrats are ready to work with President Bush in order to move our country forward because we believe that together, America can do better. So tomorrow night I hope President Bush will join us in putting progress ahead of politics so we can have a State of the Union that is as honest and strong as the American people.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise today to discuss the President's nomination of Samuel A. Alito, Jr., to the Supreme Court of the United States. I am pleased to have an opportunity to discuss this and to present reasons why my conclusion is going to be as it is.

It is no secret that Judge Alito is from my home State and I was honored to introduce him to the Judiciary Committee. I talked with him privately in my office. He is an accomplished jurist from a distinguished family in New Jersey, and at that hearing our colleague from Pennsylvania, Chairman ARLEN SPECTER, asked me if I was endorsing Judge Alito for this position and I told him I was just presenting evidence to the committee and I will let the record speak for itself. I was not going to make any prejudgments. I wanted to hear from Judge Alito. I wanted to listen to his answers to my colleagues' questions.

This nomination, as all are when it comes to the Supreme Court, is an incredibly important moment for our Nation—particularly because Judge Alito has been nominated to replace Justice Sandra Day O'Connor. Justice O'Connor, over the past 25 years, has proven she is not an ideologically conservative Justice or a liberal Justice. She has not brought an agenda to the Court. That is why Justice O'Connor has been such an important swing vote—because she always studied the facts and the law and tried to apply them fairly.

I did not always agree with her. But, like many Americans, I knew she came at these legal questions fairly and with an open mind. She showed respect for precedent. She put the law above her personal beliefs. In my view, it is critical that we replace Justice O'Connor with someone who shares her open-minded approach of looking at the law and the facts with no political agenda. Even the mere threat of legal activism on this Supreme Court threatens the future of this country and the rights of our children, our grandchildren, and other generations.

Many legal experts—judges, lawyers, professors—have contacted me regarding this nomination. Some supported him, some opposed him. Many of these experts tried to convince me one way or the other. But when I listened to Judge Alito's hearings in the Judiciary Committee, I listened with the faces of my grandchildren in my mind; with the thoughts of ordinary people who depend on the fairness of our society. I was applying Judge Alito's philosophy to the real problems of everyday people—in New Jersey and across the Nation.

I often hear many concerns from my constituents about how powerless they feel in the face of insurance companies that are often indifferent to their plight, or as an employee unfairly treated in the workplace. What rights do everyday Americans have in the face of giant corporations or unchecked Government power? At the hearing, it was clear that Judge Alito almost always lined up against the little guy and with the big corporations and Government. That is the side he came out on. In fact, the Knight-Ridder study of Judge Alito's rulings showed that he ''seldom sided with . . . an employee alleging discrimination or consumers suing big business.''

The Washington Post analysis of all divided opinions on the Third Circuit involving Judge Alito found that he ''has sided against three of every four people who claim to have been victims of discrimination'' and ''routinely . . . defers to government officials and others in a position of government authority.''

I don't think that is what our Founders wanted when they designed the Constitution.

I want to give two examples. In Bray v. Marriott, an African-American motel worker in Park Ridge, NJ, alleged discrimination against her employer. The Third Circuit ruled that she deserved her day in court because there was enough evidence of discrimination. But Judge Alito dissented, citing concerns about the cost of trials to employers. Listen to that—citing concerns about the cost of trials to employers. I wonder if the Constitution makes any reference to that or does it say everybody should have equal rights when it comes to hearing their case in the courtroom?

The other judges in that case criticized Judge Alito's dissent, saying that if it were law, then the employment discrimination laws would have no real effect.

In another case, Sheridan v. Dupont, Judge Alito was the only judge of 11 judges who heard the case to find against a woman's claim of gender discrimination. Judge Alito stated that the alleged victim should not even get a trial. That is absolutely contrary to what our country is about. This is a nation of laws. The other judges were so distressed by Judge Alito's decision that they said ''the judicial system has little to gain by Judge Alito's approach.''

So if he is confirmed to the Supreme Court we ask ourselves the question: Will Judge Alito make it more difficult for the everyday people to protect themselves and their families against the power of big business and unchecked Government? Do they need the help? Is that what we are talking about when we enact laws here? I hope not.

Unfortunately, it appears almost certain.

Regarding individual rights, there was a very disturbing exchange in the hearing involving the Constitutional right to reproductive choice.

Senator DURBIN asked Judge Alito if he would agree with Chief Justice Roberts' statement that the right to choose is ''settled law.'' It seems to me that it was a ''no-brainer''—of course it is settled law. It has been on the books for 33 years and upheld 38 times.

You don't have to go to law school to figure that one out.

But Judge Alito refused to say it was ''settled law.'' To me it was a telling moment in the hearings.

I am not a lawyer, but I understand this: The right to choose is settled law. That means that is the law as it is seen by Judge Roberts, Chief Justice.

Judge Alito's refusal to acknowledge that the right to choose is settled law indicates to me that, even before he sits on the Supreme Court, he intends to overturn Roe v. Wade.

That is the interpretation I make from that.

For everyday New Jerseyans, especially our State's women, that would be the realization of a nightmare. We do not want to turn back the clock on women's rights. Even if abortions become illegal, they will still happen—but largely in unsafe conditions. It's a nightmare that I do not want to risk happening.

Then there is the issue of abuse of power and the power of the Presidency.

Growing up in New Jersey, it is clear that our state is proud of our role in the American War for Independence. More battles of the Revolutionary War were fought in New Jersey than in any other state. The most famous image of that war is George Washington crossing the Delaware River at Trenton.

New Jersey is a state of immigrants. Many New Jerseyans came to America to escape kings, despots and dictators. So we understand why we fought the War of Independence to get rid of King George.

America doesn't want a king or an ''imperial President.'' Neither does New Jersey. That's why we have three co-equal branches of government.

So when Judge Alito talked about his theory of a ''unitary executive''—a President above the other two branches of government—I found that very troubling.

The Father of our Nation, George Washington, warned the American people about allowing a leader to claim too much power. In his farewell address to the nation, Washington indicated his concern about the Presidency becoming too powerful.

He said we should avoid allowing:

> the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.

Those are Washington's words. But they have a real resonance today.

The current administration claims a power beyond the laws that Congress has set. It is an administration that believes it can spy on Americans without a warrant, despite specific laws to the contrary. These are the kinds of abuses that caused the citizens of New Jersey and the other American colonies to rise up against King George

We don't want a King. And we don't want to create a Supreme Court that will crown this President—or any future President—Republican or Democratic.

The question before us is not a generic question of whether Judge Alito is qualified for the Supreme Court. The real question is whether Judge Alito is the right person for this seat on the Supreme Court. The seat at issue is Sandra Day O'Connor's seat. It is a seat held by a middle of the road, balanced justice.

As I noted during my testimony introducing Judge Alito to the Judiciary Committee: he is a young man. If the Senate confirms him for a lifetime appointment to the Supreme Court, he might serve for three decades—or even longer. His decisions would affect not only our rights, but also the rights of our children, our grandchildren and other future generations.

That's why, after careful consideration and deliberation, I have decided to vote no on the confirmation of Judge Alito. He is a good, decent man—an ethical man. I do not think he subscribes to any bigoted views. But I believe there is a grave risk that he carries a legal agenda with him, one that he will bring to the Supreme Court.

I don't think this is a black-and-white issue. I think it is a gray issue. If there is a gray issue, if there is doubt about where we are going to come out, I want to decide on protecting women's rights and protecting ordinary people in fairness before a court of law.

While there will be law professors and others who will disagree with my analysis, as I said before, I am more concerned about the effect of this nomination on everyday people in New Jersey and across the country.

I am proud that there is a Federal courthouse in Newark that carries my name. It was while I was absent from the Senate a while that that was done. But I fought hard to get an inscription placed on the wall of that courthouse. I wrote it. It reads:

> The true measure of a democracy is its dispensation of justice.

This Nation of laws has to continue to be just that, and people have to know that they are treated fairly and that their personal rights are protected and that they can bring courses of action if their rights are damaged.

I believe in that quote. It guides me today.

For the parents fighting an insurance company for access to health care for their child, for the blue-collar worker facing harassment in the workplace, for women who want government's hands off their bodies, for everyday people, I will oppose this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, I rise, for the first time in this body, to speak on the nomination of Samuel Alito to serve on the Supreme Court of the United States. No matter one's political persuasion, we all take pride in the honor that has been bestowed on a fellow New Jerseyan.

Samuel Alito's story is one that rings familiar to so many New Jerseyans, including myself. His parents came to this country in search of opportunity, and worked hard to build a better life for their children. The son of immigrants, Judge Alito's life is a story that demonstrates the power of seizing opportunity and working hard.

Frankly, it is a story close to my own heart. I too, am the son of immigrants who came to New Jersey to seek a better life and greater opportunity. Thanks to their hard work, and my own, I was the first in my family to graduate from college and law school.

Yet home State pride is not a sufficient reason for supporting a nominee. For a Supreme Court appointment is a life-time appointment. When the Supreme Court decides, it is the law of the land and their decisions affect the lives of millions of Americans. So, it's not where you come from that matters, but where you will take the nation.

Sam Alito has served his entire legal career in public service, and for that he is to be commended. His work as a prosecutor and as an appellate judge for the past 15 years has given him substantial experience. In his hearings and his meeting with me, he demonstrated that he has a keen intellect. Judged simply by that standard, Sam Alito is ready to serve.

But competence and intellect is the very least we should expect from someone seeking a lifetime appointment to the highest court in the land. Indeed, competence alone might be enough for a nominee for one of a myriad of other appointments. But this is about the Supreme Court of the United States. The Supreme Court, alone among our courts, has the power to revisit and reverse its previous decisions. So surely, we should also demand that our justices fairly interpret the law, respect judicial precedent, and properly balance the rights of individuals and the power of the state. Above all, we should demand that they check their personal beliefs at the door.

The seat that Judge Alito hopes to fill is one of great importance. Justice O'Connor has been the deciding vote in key cases protecting individual rights and freedoms on a narrowly divided Court, and the stakes in selecting her replacement are high. I have not agreed with every one of her decisions. But she has shown throughout her tenure a respect for law over ideology and a commitment to deciding each case not on the personal views she brought to the bench, but on the facts before her. When some on the court sought to inject an activist political philosophy into judicial decision-making and to turn back the clock on the liberties afforded the American people under the Constitution, it was Justice O'Connor who blocked their path.

I had hoped Judge Alito would clearly demonstrate that he shares the commitment to protecting the individual rights and freedoms that Justice O'Connor so often cast the deciding vote to defend. Decades of progress in protecting basic rights, including privacy, women's rights, and civil rights, are at stake with this nomination. The burden was on Judge Alito to be forthright and unambiguous in his answers.

Unfortunately, his testimony was not reassuring and his record makes clear what kind of justice Judge Alito would be. A justice who would vote to overturn a woman's right to choose, a justice who has time and time again sided with corporations and against average Americans, a justice who would allow this administration to continue to stretch and potentially violate its legal and constitutional authority. Especially with the challenges our Nation faces today and will face tomorrow, America cannot afford that kind of justice.

We live in extraordinary times today. President Bush has sought the accumulation of unprecedented powers. He has asserted the authority to not only torture detainees and indefinitely detain American citizens as enemy combatants, but to also conduct warrantless wiretapping of American citizens.

At different times throughout our country's history, Presidents under the cloak of Commander-in-Chief have exercised excessive authority that has eroded individual rights and freedoms in the name of protecting the Nation. Over 200 years ago, our Founding Fathers purposely established our Nation's government with three distinct coequal branches to help prevent this concentration and abuse of power. An independent judiciary, part of our country's long and proud history of checks and balances, is the only thing that stands between the executive branch and these potential threats to our rule of law.

In 2004, the Supreme Court stood up for the rule of law when it found that the President cannot ignore the Constitution and confine American citizens indefinitely without the ability to challenge their detentions. Decisions such as this, which recognize that our Nation's security is enhanced rather than undermined by respect of the rule of law, are what has always made the United States the envy of people around the world.

The bias Judge Alito has shown in favor of the executive branch threatens to undermine the freedoms that our judiciary has historically protected. From his work as a government lawyer to a speech before the Federalist Society in 2000, he consistently favors the concentration of unprecedented power in the hands of the President, even endorsing the so-called ''unitary executive'' theory that even many conservatives view as being at the fringe of judicial philosophy. It virtually gives the presidency exclusive powers that historically have belonged to either Congress or the courts. This theory is an activist theory, not a theory that reflects mainstream American thinking or values. In fact, the Supreme Court has largely rejected it.

Judge Alito has also backed granting absolute immunity to high-ranking Government officials who authorized illegal, warrantless wiretaps of American citizens, which is another position the Supreme Court has rejected. As far back as the Reagan administration, he has advocated that the President issue signing statements in an effort to shape the meaning of legislation. President Bush has often used this practice, most tellingly in December when he claimed the administration could ignore the new law banning torture whenever he sees fit. This undermines one of the coequal branches of our government, the people's elected representatives of the United States Congress.

Judge Alito has found against congressional authority when he argued in dissent in United States v. Rybar against a ban on machine guns that five other appellate courts and the Third Circuit itself upheld. Judge Alito also authored the majority opinion in Chittister v. Department of Community and Economic Development, invalidating parts of the Family and Medical Leave Act for exceeding the bounds of congressional authority—a position the Supreme Court subsequently rejected.

Several in-depth reviews show, Judge Alito's rulings, especially his dissents, consistently excuse actions taken by the executive branch that infringe on the rights of average Americans. One study found that 84 percent of Judge Alito's dissents favor the government over individual rights. Another, the Alito Project at Yale Law School conducted a comprehensive analysis of the Judge's 15 years on the Federal bench. They found that ''Judge Alito has permitted individuals to be deprived of property or liberty without actual notice or a prior hearing.''

During his hearings and in my meeting with him, Judge Alito did nothing to distance himself from these positions; in fact, by refusing to candidly discuss where he stands on executive power, he only strengthened my concerns about his views.

If it's not where you come from that matters, but where you will take the

nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

Back to a time when a President suspended the writ of habeas corpus; back to a time when a President ordered the internment of individuals based upon their ethnicity; and back to a time when a President ordered the unlawful breakins and wiretaps against his opponents.

Our next Supreme Court justice must be a check and balance against broad Presidential powers that are inconsistent with our Constitution.

With respect to reproductive rights, Judge Alito told the members of the Judiciary Committee that he would look at such cases with an ''open mind.'' However, he has, throughout his career, written that the Constitution does not protect a woman's right to choose, worked to incrementally limit and eventually overturn Roe v. Wade, so narrowly interpreted the ''undue burden'' standard in one specific case as to basically outlaw this right for an entire group of women, and refused to state whether Roe is ''settled law.''

When asked by Judiciary Committee Chairman SPECTER whether he continues to believe that the Constitution does not protect the right to choose, as he wrote in his 1985 job application at the Department of Justice, Judge Alito acknowledged that it was his view in 1985, but refused to say whether or not he holds that view today. I found Judge Alito' s refusal to answer this question extremely troubling.

Later, as an Assistant Solicitor General, Judge Alito wrote a memo outlining a new legal strategy that the Reagan administration could use to ''advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime, of mitigating its effects.''

As a judge on the Third Circuit Court of Appeals, Judge Alito alone concluded that all of the Pennsylvania restrictions, including the spousal notification provision, should be upheld as constitutional in Planned Parenthood v. Casey. Ultimately, the Supreme Court found 5–4 that the spousal notification provision was unconstitutional. Justice O'Connor, who wrote the opinion, rejected Judge Alito's arguments and wrote that the spousal notification provision constituted an impermissible ''undue burden'' on reproductive rights. She concluded by saying ''Women do not lose their constitutionally protected liberty when they marry.''

During our meeting, when I asked Judge Alito, ''Do you believe Roe v. Wade is the 'settled law' of the land,'' he was unwilling to say that it is settled law. During the Judiciary Committee hearing, he said multiple times in response to questions from three of my distinguished colleagues on the Committee that the principle of stare decisis, or respect for precedent, is not an ''inexorable command.'' While this is undoubtly the case, this language is exactly what Justice Rehnquist used in his dissent in Planned Parenthood v. Casey when arguing that Roe should be overturned. Justice Rehnquist wrote, ''In our view, authentic principles of stare decisis do not require that any portion of the reasoning in Roe be kept intact. 'Stare decisis is not . . . a universal, inexorable command.' ''

Because I was concerned that his approach to these issues is far different than Justice O'Connor's, I gave Judge Alito every opportunity in our meeting to alleviate my concerns and those expressed by many New Jerseyans. I regret that he did not do so.

If it's not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

What does Morning in America look like after Judge Alito becomes a Supreme Court justice? Will it be an America where a woman's constitutional right to privacy is not acknowledged? Will it be an America where a woman does not have access to the best medical care? Will it be an America where women do not control their own bodies?

Our next Supreme Court justice must respect both the constitutional right to privacy and a woman's right to choose.

Our Nation's civil rights are needed to provide equal rights in employment, voting, or disability, they are designed to eliminate discrimination from our society and to provide equal opportunity and access. These laws are often the direct result of our country's civil rights movement.

Unfortunately, Judge Alito has consistently applied a narrow interpretation of civil rights laws. Over his 15-year judicial career, he has more often than not sided with corporations and against individuals.

In five split decisions involving a claim of sex discrimination, Judge Alito has sided with the person accused of the sex discrimination every time. In Sheridan v. E.I DuPont de Nemours, a woman brought a gender discrimination lawsuit after being denied a promotion. A jury ruled in her favor, but the trial judge threw out the verdict. The full complement of the Third Circuit voted 10–1 to reverse the judge's decision in this sex discrimination case and remand the case for reconsideration. Judge Alito wrote the lone dissent, arguing that the case should be dismissed. If Judge Alito's view was the law of the land, virtually no woman who has been wrongfully denied a promotion based upon her gender would have her day in court.

In the area of race discrimination, Judge Alito voted in dissent against the plaintiff in both split decisions cases. The Third Circuit held that the plaintiff in Bray v. Marriot Hotels had shown enough evidence of possible racial discrimination to merit a trial before a jury. As in Sheridan, Judge Alito dissented, saying that the plaintiff had not produced enough evidence even to get to a trial of a jury of their peers. If Judge Alito's view was the law of the land, virtually no person of color would be able to pursue discrimination based on race in the courts of our nation.

From the bench, Judge Alito has participated in five split decisions in the area of disability rights law and he sided with the defendant four out of the five times. In Nathanson v. Medical College of Pennsylvania, relating to a college's knowledge of and response to the disability needs of a student, the majority held that the facts required a jury to hear her claims. Judge Alito disagreed with the majority, writing that Nathanson failed to prove that the college acted unreasonably in its responses to her requests for alternative seating arrangements. If Judge Alito's view was the law of the land, virtually no disabled person denied alternative accommodations could seek relief from the court.

These are only symbolic of the many cases where Judge Alito would say no to the average American citizen.

If someone's daughter was seeking relief from discrimination based upon her gender, Judge Alito would say no. If an American of color was seeking relief from discrimination based upon their race, Judge Alito would say no. If someone's handicapped son was seeking relief from discrimination based upon his disability, Judge Alito would say no. Judge Alito would make it virtually impossible for an individual to go to court when his or her rights were violated, and have their day of judgment.

If it's not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the Nation forward or move our Nation back?

Back to a time when there was not equal access to schools and government programs, back to a time when employers could fire employees without just cause; and back to a time when all citizens were not guaranteed the right to vote.

Our next Supreme Court justice must truly subscribe to the inscription above the entrance to the United States Supreme Court—''Equal Justice under Law.''

The confirmation of a Supreme Court justice is one of the two most important responsibilities that a Senator has, in my view. The first is a decision on war and peace, which is also about life and death. The other is deciding who will have a lifetime appointment to the Court that decides the laws of the land.

Make no mistake about it, Judge Alito is a decent, accomplished, intelligent man. A man who is proud to call our shared State of New Jersey home. But it is not enough to come from New Jersey—the test is—will you represent the values of New Jersey and this Nation on the highest court in the land?

In New Jersey we value creating opportunity, we cherish the idea of individual freedom and responsibility, and

we believe that justice is a force that should level the playing field between the individual and the powerful.

I have given careful consideration to this nomination, and I entered the process with hopes of supporting Judge Alito. This is my first vote in this Senate, and I had hoped to cast it in support of this nominee, but after reviewing his record, and his testimony before my fellow Senators, I cannot.

The question for me has been will he tilt the court in its ideology so far that he will place in jeopardy decades of progress in protecting individual rights and freedoms. I am afraid that answer is yes. In good conscience, I regrettably cannot support his nomination for a lifetime appointment to be an Associate Justice of the Supreme Court of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Missouri.

Mr. BOND. Mr. President, on the question of the confirmation of Judge Samuel Alito, when you boil everything down and clear away all of the other issues, the most important thing each of us wants from a judge is fairness and impartiality. None of us would want to go into a courtroom and think our judge had already made up his mind before hearing our case. Whether we are rich or poor, weak or strong, but especially if we are poor or weak, victim or defendant, we need to know we will get a fair trial.

We would not get a fair trial if we faced a judge who had already made up his mind. Not only would the deck be stacked against us, we would be dealt a losing hand if we had to face a judge with an agenda different from our case. That is what justice means—impartial and objective. That is the kind of judge we want hearing our case, and that is the kind of judge Sam Alito is.

Everything we have learned about Judge Alito, from his testimony before the Senate Judiciary Committee, his lengthy record of decided cases, to the testimonials of his colleagues and peers, tells us that Judge Alito will be a fair, impartial, and objective Justice.

Judge Alito has told us how he believes a judge cannot prejudge an issue, a judge cannot have an agenda, a judge cannot have a preferred outcome in any particular case.

I was so glad to see that during his confirmation hearing Judge Alito would not allow himself to be forced into prejudging any cases. Now, many tried. They went down their list of issues and asked whether Judge Alito agreed with their agenda. They wanted to know how he would rule on one kind of case or another. They wanted him to decide cases before he even heard them. That would not be justice, and that would not be Judge Alito.

Not only does Judge Alito know justice, Judge Alito knows democracy. Democracy means that laws governing the people can only be made by those elected by the people to make laws. He knows the Members of Congress are elected to make laws. The citizens of Missouri elected their Representatives and Senators to represent them in Congress, the legislative body. I am honored to be one of those so chosen. Judge Alito is not.

The citizens of Missouri are not electing Judge Alito to make laws. Judge Alito knows he will not have the power to make laws. Judge Alito knows he is neither a Congressman nor a Senator who can pass his own legislation from the bench. That is not the role of a judge.

Judge Alito knows he is not a politician advocating a program. That is not what a judge should do. He is not a politician responding to a stakeholder, carrying out the agenda of his constituency, whether it be New Jersey or any other State in the Nation, taking the pulse of voters or watching the polls. That is not how to be a judge.

Judge Alito has told us he will look at the facts with an open mind and then apply the Constitution and the laws as written. He will not make up the law when he wants, he will not change the law when he needs.

Judge Alito also knows the law, as many of my colleagues on the Senate Judiciary Committee found out. At every stage of his life, he has excelled at knowing and applying the law. As a law clerk to a Federal judge, Department of Justice official, Federal prosecutor, and now a Federal appellate judge with 15 years experience on the bench, Judge Alito is one of the most qualified ever nominated for the Supreme Court.

A very good friend of mine is an appellate judge, who in law school had the pleasure of supervising a legal document written by Judge Alito. He told me Judge Alito had the finest legal, judicial mind he had ever encountered. I trust his judgment.

Judge Alito's peers and colleagues all agree that Judge Alito is supremely qualified for the Supreme Court. He comes highly recommended by his colleagues and members of the legal profession because of his legal knowledge and experience. Even those who have worked with Judge Alito and disagree with him on the issues or the outcome of his rulings consider him fair-minded and evenhanded.

In short, Judge Alito will make a great Supreme Court Justice. Unfortunately, and regrettably, the Senate's vote will not reflect that. Perhaps it was a simpler time, less partisan, less subject to politics, less subject to the whims of shifting constituencies and pressure groups when we could overwhelmingly support those overwhelmingly qualified for the Court.

For example, both Justices Ginsburg and Scalia received unanimous or near unanimous approval. One came from the left, nominated by a Democratic President, and an advocate for the ACLU; another is a brilliant legal mind, supported by the right. Partisan politics were put aside when we voted for these Supreme Court nominees.

Unfortunately, there are those who want to use Judge Alito as a political football. I, for one, believe very strongly our judges and our justice system should be above partisan politics. Justice deserve better than to have the nominees dragged through the political mud.

My focus is on the nominee himself and on his legal knowledge and experience. In that regard, Judge Alito should be on the Supreme Court, and I will proudly vote to place him on the Supreme Court.

Every case he hears, he will approach with an open mind. Every case he considers, he will apply the law and Constitution as written. Every case he decides, he will check his personal feelings at the door and weigh the scales of justice.

We can expect, and should expect, nothing more from a Justice, and justice deserves nothing less.

I urge my colleagues to put aside partisan politics, to put aside pressure from special interests, to vote to invoke cloture, and then to vote on a majority vote to confirm Justice Alito to the Supreme Court.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I have in my hand a number of endorsement letters that have been written, starting with the Grand Lodge of the Fraternal Order of Police. I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Washington, DC, November 18, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee to the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LEAHY: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our strong support for the nomination of Samuel A. Alito, Jr. to be an Associate Justice on the United States Supreme Court.

Judge Alito has a long and distinguished career as a public servant, a practicing attorney, and a Federal jurist. He currently serves as a justice on the U.S. Court of Appeals for the Third Circuit, the very same Circuit where he began his career as a law clerk for Judge Leonard I. Garth. Judge Alito spent four years as an Assistant U.S. Attorney before becoming an Assistant to the U.S. Solicitor General in 1981. During his tenure with the Solicitor's office, he argued thirteen cases before the United States Supreme Court, winning twelve of them. In 1985, he served as Deputy Assistant U.S. Attorney General before returning to his native New Jersey to serve as U.S. Attorney in 1990. Nominated by President George H.W. Bush to the Third Circuit, the Senate confirmed him unanimously on a voice vote.

The F.O.P. believes that nominees for posts on the Federal bench must meet two qualifications: a proven record of success as a practicing attorney and the respect of the law enforcement community. Judge Sam

Alito meets both of these important criteria. In his fifteen years as a Federal judge, he has demonstrated respect for the Consistution, for the rights of all Americans, for law, and for law enforcement officers, who often find it very difficult to successfully assert their rights as employees. Judge Alito demonstrated his keen understanding of this in a case brought by Muslim police officers in Newark, New Jersey (*Fraternal Order of Police Newark Lodge No. 12* v. *City of Newark,* 1999). The Newark Police Department sought to force these officers to shave their beards, which they wore in accordance with their religious beliefs. Judge Alito ruled in favor of the officers in this case, correctly noting that the department's policy unconstitutionally infringed on their civil rights under the First Amendment.

The F.O.P. is also very supportive of Judge Alito's decision in a 1993 decision filed by a coal miner seeking disability benefits under the Black Lung Benefits Act (*Cort* v. *Director, Office of Workers' Compensation Programs*). Judge Alito ruled in favor of a coal miner, holding that the Benefits Review Board which denied the miner's claim had misapplied the applicable law regarding disability. He ordered that the case be remanded for an award of benefits, instructing that the Board could not consider any other grounds for denying benefits. Members of the F.O.P. and survivor families who have been forced to appeal decisions which denied benefits under workers' compensation laws or programs like the Public Safety Officer Benefit (PSOB) know first-hand just how important it is to have a jurist with a working knowledge of applicable law and a strong identification with the claimants as opposed to government bureaucrats looking to keep costs down.

Judge Samuel A. Alito, Jr. has demonstrated that he will be an outstanding addition to the Supreme Court, and that he has rightfully earned his place beside the finest legal minds in the nation. We are proud to support his nomination and, on behalf of the more than 321,000 members of the Fraternal Order of Police, I urge the Judiciary Committee to expeditiously approve his nomination. Please do not hesitate to contact me, or Executive Director Jim Pasco, through our Washington office if we may be of any further assistance.

Sincerely,

CHUCK CANTERBURY,
National President.

NOVEMBER 9, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST, MINORITY LEADER REID, CHAIRMAN SPECTER, AND RANKING MEMBER LEAHY: We are former law clerks of Judge Samuel A. Alito, Jr. We are writing to urge the United States Senate to confirm Judge Alito as the next Associate Justice of the United States Supreme Court.

Our party affiliations and views on policy matters span the political spectrum. We have worked for members of Congress on both sides of the aisle and have actively supported and worked on behalf of Democratic, Republican and Independent candidates. What unites us is our strong support for Judge Alito and our deep belief that he will be an outstanding Supreme Court Justice.

Judge Alito's qualifications are well known and beyond dispute. Judge Alito graduated from Princeton University and Yale Law School. Prior to his appointment to the bench, Judge Alito had a distinguished legal career at the Department of Justice, which culminated in his appointment as the U.S. Attorney for the District of New Jersey. Judge Alito has served on the United States Court of Appeals for the Third Circuit for 15 years and has more judicial experience than any Supreme Court nominee in more than 70 years. During his time on the bench, Judge Alito has issued hundreds of opinions, and his extraordinary intellect has contributed to virtually every area of the law.

As law clerks, we had the privilege of working closely with Judge Alito and saw firsthand how he reviewed cases, prepared for argument, reached decisions, and drafted opinions. We collectively were involved in thousands of cases, and it never once appeared to us that Judge Alito had pre-judged a case or ruled based on political ideology. To the contrary, Judge Alito meticulously and diligently applied controlling legal authority to the facts of each case after full and careful consideration of all relevant legal arguments. It is our uniform experience that Judge Alito was guided by his profound respect for the Constitution and the limited role of the judicial branch. Where the Supreme Court or the Third Circuit had spoken on an issue, he applied that precedent faithfully and fairly. Where Congress had spoken, he gave the statute its commonsense reading, eschewing both rigid interpretations that undermined the statute's clear purpose and attempts by litigants to distort the statute's plain language to advance policy goals not adopted by Congress. In short, the only result that Judge Alito ever tried to reach in a case was the result dictated by the applicable law and the relevant facts.

Our admiration for Judge Alito extends far beyond his legal acumen and commitment to principled judicial decision-making. As law clerks, we experienced Judge Alito's willingness to consider and debate all points of view. We witnessed the way in which Judge Alito treated everyone he encountered—whether an attorney at oral argument, a clerk, an intern, a member of the court staff, or a fellow judge—with utmost courtesy and respect. We were touched by his humility and decency. And we saw his absolute devotion to his family.

In short, we urge that Judge Alito be confirmed as the next Associate Justice of the Supreme Court.

Sincerely,

Signed by 51 former clerks.

EDWARDS ANGELL
PALMER & DODGE LLP,
New York, NY, November 23, 2005.

Re Samuel A. Alito.

U.S. Senate,
Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR MEMBERS OF THE SENATE JUDICIARY COMMITTEE: I am writing to express my enthusiastic and unqualified recommendation that Samuel A. Alito be confirmed as an Associate Justice of the United States Supreme Court.

I worked with Judge Alito in 1987. He was appointed United States Attorney for the District of New Jersey. At that time I was the Deputy Chief and Acting Chief of the Special Prosecutions Unit. I continued in that capacity for approximately eight months after Sam arrived at the U.S. Attorney's Office. He was an exemplary U.S. Attorney. He was also an exemplary boss. He was at all times knowledgeable, thoughtful and supportive of me and the other lawyers in the office. In his quiet and wryly humorous way, he demonstrated wonderful leadership. It was clear that he was very conscious of the responsibilities of that office and he fulfilled those responsibilities admirably. I was very proud to work for Sam Alito.

After leaving the U.S. Attorney's Office, I became a private practitioner. I have had the pleasure of appearing as an advocate before Judge Alito in the United States Court of Appeals for the Third Circuit in a number of cases. It is a pleasure to appear before Judge Alito due to his genial demeanor and obvious professionalism. His opinions—even when against my cause—were thoughtful, considerate, justifiable and well written.

Judge Alito did not ask me to write this letter; I volunteered. I am a lifelong Democrat. I am the President-elect of a national women's bar association. I chair the Corporate Integrity and White Collar Crime group at a national law firm. I do not speak on behalf of either my law firm or the women's bar association. I speak for myself only. But by providing my credentials as an outspoken women's rights advocate and liberal-minded criminal defense attorney, I hope you will appreciate the significance of my unqualified and enthusiastic recommendation of Sam Alito for the Supreme Court.

Sam possesses the best qualities for judges. He is thoughtful, brilliant, measured, serious, and conscious of the awesome responsibilities imposed by his position. I cannot think of better qualities for a Supreme Court Justice. It is my fervent hope that politics will not prevent this extraordinarily capable candidate from serving as Associate Justice on the United States Supreme Court.

I will be happy to provide any further details or information in any private or public forum.

Respectfully submitted,

CATHY FLEMING.

JANUARY 4, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
HON. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LEAHY: We write in support of the nomination of Judge Samuel A. Alito, Jr. to the United States Supreme Court. Each of us has devoted a significant portion of our legal practice or research to appellate matters. Although we reflect a broad range of political, policy and legal views, we all agree that Judge Alito should be confirmed by the Senate. Judge Alito has a well-deserved reputation as an outstanding jurist. He is, in every sense of the term, a ''judge's judge.'' His opinions are fair, thoughtful and rigorous. Those of us who have appeared before Judge Alito appreciate his preparation for argument, his temperament on the bench and the quality and incisiveness of the questions he asks. Those of us who have worked with Judge Alito respect his legal skills, his integrity and his modesty. In short, Judge Alito has the attributes that we believe are essential to being an outstanding Supreme Court Justice and therefore should be confirmed. Thank you for considering our views.

Sincerely,

Signed by 206 lawyers.

Mr. CORNYN. Mr. President, I also have in my other hand a series of editorials, starting with a Dallas Morning News editorial entitled ''Confirm Alito.'' These are all editorials from newspapers around the country recommending that this body confirm Judge Alito. I ask unanimous consent that

these editorials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Dallas Morning News, Jan. 14, 2006]

CONFIRM ALITO: NOMINEE DESERVES SENATE'S BACKING

After hearing Samuel Alito testify this week, this editorial board's assessment is that the appellate judge has the intellectual breadth and legal depth to sit on the Supreme Court. With few exceptions, he fielded Senate Judiciary Committee questions with a ready grasp of case law and nuance.

He also came across as quite reasonable. Just as Clinton nominee Stephen Breyer struck senators as a mainstream liberal, Mr. Alito resides within the 40-yard lines of conservatism.

We offer this conclusion—and our recommendation of him—after comparing his testimony with several questions we raised Monday.

First, his embrace of judicial precedent was persuasive enough to conclude he wouldn't rush to overturn Roe vs. Wade. He didn't go as far as John Roberts in saying the abortion rights case is settled law. But he repeatedly emphasized his belief in building upon previous decisions.

True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We'll sum it up this way: Based upon his testimony, we'd feel very misled and deeply disappointed if he joined in an overthrow of Roe.

Second, he allayed fears he wholly prefers presidential power. He left wiggle room on issues such as where the president can deploy troops without congressional authority. But he didn't live up to his billing as a justice who'd make light of checks and balances. Most notably, he agreed presidents don't possess unlimited power, even during war.

Third, his objections to the ''one man, one vote'' doctrine appeared mostly technical. For example, he wondered whether it meant congressional districts should have an exactly equal amount of voters each term. He unveiled no willingness to undo the ruling that ensures fair voting weight for minorities.

It was unsettling that some of the nominee's views appeared different from earlier speeches or writings. A couple of times, his answers had a disturbing then-and-now quality. But Samuel Alito's testimony showed he could become a thoughtful conservative justice. The Senate should give him that opportunity.

[From the Miami Herald, Jan. 24, 2006]

QUALIFIED TO SERVE ON THE SUPREME COURT

There is little doubt that in the coming days the Senate will confirm the nomination of Judge Samuel Alito to replace Justice Sandra Day O'Connor on the U.S. Supreme Court. He deserves to be confirmed. This is not an assessment of his judicial philosophy but of his undoubted qualifications for the job. He has the intellectual heft, judicial temperament and fealty to the U.S. Constitution that are prerequisites for a Supreme Court justice. In 15 years on the federal appellate bench, he has demonstrated a sure grasp of issues.

Critics have sought to paint Judge Alito as an ideologue whose views are out of the judicial mainstream. In the past, we have found this a reason to raise doubts about some of the more extreme nominations for the federal appeals courts. However, this is not a fair argument to raise against Judge Alito.

According to statistics compiled by the Court of Appeals for the Third Judicial Circuit, Judge Alito has dissented only 16 times in the last six years, fewer times than some of his colleagues. On civil-rights cases, his co-panelists agreed with Judge Alito's votes and written opinions 94 percent of the time. It is possible to take issue with some of his views in those instances where he was in dissent, but this isn't the record of a judge on the fringe of mainstream judicial thinking.

During 18 hours of hearings—almost twice as long as the interrogation of John Roberts—Judge Alito displayed a deep understanding of the legal issues the court is likely to confront and kept cool under fire. He did everything possible to avoid saying how he would rule on some of the controversial issues, but that is hardly surprising. Unfortunately, given the divisiveness in Washington today too much candor can prove fatal to a nominee.

In nominating Judge Alito, President Bush fulfilled a campaign promise to appoint judges who shared the views of Justices Clarence Thomas and Antonin Scalia. Thus, he delivered a candidate with sound credentials but a decidedly conservative record that many find troubling.

This record includes a narrow view of abortion rights, apparent support for the expansive powers of the presidency in wartime and a narrow interpretation of the regulatory authority of Congress. Judge Alito likely will help move the court rightward, and some senators, no doubt, will find this a compelling reason to vote against him.

No justice should be denied a seat on the court, however, solely on the basis of judicial philosophy, particularly someone of Judge Alito's proven ability and experience. The best way for critics—Democrats, mostly—to prevail when it comes to selecting federal judges is to prevail at the ballot box.

[From the Milwaukee Journal Sentinel, Jan. 15, 2006]

SUPREME COURT; ALITO DESERVES CONFIRMATION

Samuel Alito should be confirmed to the U.S. Supreme Court.

And, barring any last-minute disqualifying revelations, the first step toward that goal should be yes votes in the Senate Judiciary Committee, including from Wisconsin's two senators, both of whom sit on that committee.

Democrats are understandably concerned about specific red flags in Alito's record but should nonetheless reject a filibuster. Nor should they move, as it appeared likely late last week they would, to delay the committee's vote. Both would be antithetical to the democratic process in this specific case.

That's because, though we would have preferred Alito to be more open about his judicial philosophy, he did make one case quite effectively. He is a conservative jurist. This is what the electorate, albeit narrowly, indicated it wanted when it reelected George W. Bush as president in 2004. There can be no reasonable claim that voters did not know this to be a likely consequence of their votes.

Yes, Alito's views peg him as closer to a constitutional originalist than one with more expansive views of that document, a view we prefer. But Alito is likely not the wildeyed, knee-jerk ideologue his critics have depicted. Instead, a broad view of his writings, rulings and character indicate a judge capable of giving proper and due weight to the law. Alito is scholarly, intelligent and eminently qualified to sit on the bench, as attests his rating as such by the American Bar Association.

This is not to say that there isn't a roll-of-the-dice quality to this choice for the Supreme Court. But this is so with most, if not all, judicial nominations. Just ask Republicans, many of whom now have buyers' remorse over Justices David Souter and Anthony Kennedy.

Alito's 1985 stance, writing as a lawyer within the Reagan administration, that the Constitution does not support abortion rights is troubling. Unlike John Roberts during his recent chief justice confirmation hearings, Alito refused to state that Roe vs. Wade is settled law. He did assert that it is ''embedded in the culture'' and should be respected as precedent.

A stronger statement would have been more reassuring, but in a living, breathing Constitution, much, in fact, will not be settled. Were it so, then Plessy vs. Ferguson, which the Supreme Court used in 1896 to enable decades of segregation under a separate but equal rule, could not have been undone by the court in 1954.

Americans should take some comfort in Alito's acknowledgment of a right to privacy in the Constitution. His refusal to be pinned down more concretely on this point is defensible given that the court will rule on abortion.

Similarly, the public should take some solace from his contention that no president is above the law, given the controversies sparked by several presidential actions in the war on terrorism.

Wisconsin is fortunate to have two early votes on judicial nominations. Democratic Sens. Herb Kohl and Russ Feingold are both Judiciary Committee members. Both acquitted themselves ably in questioning the nominee. And both should vote the nominee out of committee.

Kohl properly probed on abortion and one-person, one-vote and inquired about glowing Alito comments on Robert Bork, denied a Supreme Court seat in 1987. Feingold asked necessary questions on executive powers, Alito's ruling in a case involving a mutual fund in which he invested and on the death penalty. Together, they helped ensure the hearings were more than a GOP lovefest for the nominee.

But Alito handled himself well in answering. If not as forthcoming as would be ideal, he offered enough assurances to warrant his confirmation. Democrats, however, are most upset over what Alito didn't say rather than what he did. This is not an entirely acceptable standard.

We're aware that this nomination carries a weighty significance because the nominee will replace Justice Sandra Day O'Connor, often a swing vote in a divided court. And Alito is still an open book on important issues. But, again, elections have consequences. Voters knew what these were, and Alito is not demonstrably beyond the pale of the U.S. mainstream.

Alito—and Roberts—could disappoint, of course, and renege on their own claims of open-mindedness. If they do, they will have betrayed a trust to the American people. But it is not at all as assured as critics have contended that Alito or Roberts will do this.

Confirm Alito. It's not risk-free, but it's the right thing to do.

[From the Philadelphia Inquirer, Jan. 15, 2006]

CONFIRM JUDGE ALITO

The Senate should confirm Judge Samuel A. Alito Jr., President Bush's nominee for the Supreme Court.

Alito, a member of the Philadelphia-based Third Circuit Court of Appeals, demonstrated during three days of questioning last week by the Senate Judiciary Committee that he does not bring a precast agenda to the job.

He does bring a cast of mind that causes some legitimate concern. But Alito showed he has the experience, modest temperament, reverence for the law, and mastery of his profession needed to serve on the high court.

A common complaint about confirmations has been that nominees stonewall the committee. Alito tried to answer nearly every question put to him. Democratic senators may not have liked his responses, but Alito dodged very few questions.

This endorsement is not enthusiastic. Alito is a more conservative nominee than anyone concerned with the nation's drift toward excessive executive power and disdain for civil liberties would prefer.

But the Supreme Court should not be stocked with justices all of the same political persuasion, left or right. As the replacement for a valuable centrist, Sandra Day O'Connor, Alito might very well move the court perceptibly to the right. But his methodical, just-the-facts approach to the law does not portend a shocking shift, and would not justify a filibuster of his nomination.

Alito did fail to allay some important concerns. On abortion, he rebuffed entreaties by Democrats to characterize Roe v. Wade as ''settled law.'' Chairman Arlen Specter (R., Pa.) commended Alito for discussing the issue in more depth than did Chief Justice John G. Roberts Jr., but this extended discourse was less than encouraging. Alito, who wrote in 1985 that the Constitution doesn't guarantee the right to abortion, would not say he feels differently today.

He pledged to ''keep an open mind'' on abortion cases. But he also said Supreme Court precedent is not ''an inexorable command.'' If Alito does consider the Constitution a living document, as he testified, he should weigh carefully the expressed desire of a majority of Americans to preserve reproductive freedoms.

On the question of presidential power, concerns linger that Alito would give undue deference to the executive branch. For all President Bush's talk about ''strict constructionism,'' his freewheeling notions about his powers would have appalled many of the Constitution's framers, who deeply feared an authoritarian executive.

At the hearings, Alito sought to temper the enthusiasm for presidential prerogative he showed in earlier writings with the statement that the president is not above the law. At least he is on the record with this view now. Being on the high court has been known to focus a justice's mind on the value of the judiciary's constitutional role as a check on the other two branches.

A distressing point was Alito's membership in the now-defunct Concerned Alumni of Princeton, a group created in 1972 to oppose the admission of women and minorities to the university. His protests that he knew little about the group's agenda, even though he touted his membership on a 1985 application for a job in the Reagan administration, were unpersuasive.

But the example of Alito's life must count for something, and that example diminishes the significance of the Princeton misstep. He is not a bigot. He has hired and promoted women and minorities. Colleagues testify to his basic decency and are mystified that he joined CAP. He has renounced the group's goals.

Alito has admitted that his failure to recuse himself in 2002 from a case involving Vanguard mutual funds, in which Alito had invested, was an ''oversight.'' It was a mistake, even though the conflict of interest was not significant. Investing in a mutual fund is not like owning stock in an individual company. But Alito had pledged to bow out of cases involving Vanguard, then didn't. That was wrong.

An analysis of Alito's written opinions shows his overriding respect for authority: for the police, for the government, for employers. Given all the recent evidence of how those parties commit deeds that damage individuals, you'd like the high court to take a more balanced view.

But Alito's cast of mind does not disqualify him. As pragmatic Judge Edward Becker of the Third Circuit testified, he and Alito disagreed only 27 times in 1,050 cases they heard together. Alito is not in the mainstream of judicial thought, but he is not too far to the right of it.

[From the Salt Lake Tribune, Dec. 7, 2005]

JUDGE ALITO IS NO IDEOLOGUE

(By Jeffrey N. Wasserstein)

As a former clerk for Judge Samuel Alito, I can tell you he is not the conservative ideologue portrayed in a recent article by Knight Ridder reporters Stephen Henderson and Howard Mintz (''Alito Opinions Reveal Pattern of Conservatism'').

I am a registered Democrat who supports progressive causes. (To my wife's consternation, I still can't bring myself to take my ''Kerry for President'' bumper sticker off of my car.) I clerked for Judge Alito from 1997 to 1998. Notwithstanding my close work with Judge Alito, until I read his 1985 Reagan job application statement, I could not tell you what his politics were. When we worked on cases, we reached the same result about 95 percent of the time. When we disagreed, it was largely due to the fact that he is a lot smarter than I am (indeed, than most people) and is far more experienced.

It was my experience that Judge Alito was (and is) capable of setting aside any personal biases he may have when he judges. He is the consummate professional.

One example that I witnessed of Judge Alito's ability to approach cases with an open mind occurred in the area of criminal law, an area in which Judge Alito—a former federal prosecutor—had particular expertise. One time, I was looking at a set of legal briefs in a criminal appeal. The attorney for the criminal defendant had submitted a sloppy brief, a very slip-shod affair. The prosecuting attorney had submitted a neat, presentable brief. I suggested (in my youth and naivete) that this would be an easy case to decide for the government.

Judge Alito stopped me cold by saying that that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant received a fair hearing before the court.

Perhaps not what one would expect from a conservative ideologue (and former federal prosecutor), but it is indicative of the way Judge Alito approaches each case with an open mind, and it is a lesson I've never forgotten.

Another example, which reached a result that would seem contrary to a conservative ideologue, was a case I worked on with Judge Alito (U.S. v. Kithcart) in which Judge Alito reversed a conviction of a black male, holding that an all-points-bulletin for ''two black men in a black sports car'' was insufficient probable cause to arrest the driver of the car. Notwithstanding the driver's guilty plea, Judge Alito reversed, finding that the initial arrest lacked probable cause, stating, ''The mere fact that Kithcart is black and the perpetrators had been described as two black males is plainly insufficient.''

This is hardly the work of a conservative ideologue.

As a former clerk to Judge Alito, I can attest to Judge Alito's deep and abiding respect for precedent and the important role of stare decisis—the doctrine that settled cases should not be continually revisited. Judge Alito has served on the U.S. Court of Appeals for the 3rd Circuit for 15 years, and has compiled a distinguished record that conclusively demonstrates respect for precedent.

The best indicator of how a justice may act on the Supreme Court is the judicial record the justice had before elevation to the court. In Judge Alito's case, one can clearly see a restrained approach to the law, deferring to a prior court decision even if he may have disagreed with its logic.

While a bald statement that ''the Constitution does not protect a right to an abortion'' in a vacuum might be cause for concern, Judge Alito's statement must be taken in context. Sen. Diane Feinstein, D-Calif., said after her meeting with Judge Alito that he explained that regardless of his statement on the job application, ''I'm now a judge, I've been on the Circuit Court for 15 years and it's very different. I'm not an advocate, I don't give heed to my personal views, what I do is interpret the law.'' Sen. Ted Kennedy, D-Mass., also noted that Judge Alito said ''he had indicated that he is an older person, that he has learned more, that he thinks he is wiser person (and) that he's got a better grasp and understanding about constitutional rights and liberties.''

Given Judge Alito's respect for precedent and stare decisis as demonstrated by actually adhering to precedent for 15 years while on the Court of Appeals—even in cases that reached results that would seem incorrect to a conservative—and the open mind with which I saw him approach cases, labeling Judge Alito an ''ideologue'' would be unfair and distorts his record on the bench.

Mr. CORNYN. Mr. President, I support the nomination of Sam Alito to the U.S. Supreme Court. The American people, in public opinion polls we have seen reported in the newspapers, indicate they also want Judge Alito on the Supreme Court. Yet we are here today, after extended debate, because there are a handful of Senators who are determined to stop Judge Alito's nomination from even receiving an up-or-down vote. Hence, at 4:30 we will have a vote on cloture, whether to close debate. It is my sincere hope that at least 60 Senators will vote to close debate so tomorrow morning we can have that up-or-down vote that this nominee deserves and that the Constitution requires.

There really is no pretense that this tactic of delay for delay's sake is needed for extended debate. Judge Alito was nominated months ago, and we have been debating this nomination without interruption since last Wednesday. Not only has Judge Alito been investigated by the FBI but also by the American Bar Association's Standing Committee on the Federal Judiciary. He has been investigated by the Senate Judiciary Committee, on which I am proud to serve, and been through extended televised hearings. The fact is, even the minority leader, the Democrat leader, conceded ''[t]here's been adequate time for people to debate'' this nomination.

So this is delay for delay's sake. Fortunately, there is no indication this delay tactic will succeed. Judge Alito's supporters in this body are so numerous that everyone has conceded—even the minority, who is determined to try to filibuster this nomination, concedes

the filibuster attempt is futile and this nominee will be confirmed.

So what could possibly be the motivation? The Senator from Missouri, who just spoke before me, alluded to this. I think it is common knowledge that it really is outside interest groups that are putting, in some cases, irresistible pressure on Senators to oppose this nomination, even though they realize the delay and the potential filibuster are futile. These are groups that have declared—and I quote, in one instance—''you name it, we'll do it'' to defeat Judge Alito. I am very sorry that some of my colleagues have fallen under the spell of some of these groups. In my view, it is wrong to place the wishes of these interest groups before the wishes of the American people.

I think it is also a mistake to waste the valuable time of the Senate, time we could be using to address other real and urgent needs that no doubt the President will address tomorrow night in his State of the Union speech and which are well known to each of us here. We have more important things to do than to stage events to facilitate fundraising by special interest groups. I urge all of my colleagues to stand up against the interest groups and to put the American people first by voting against the filibuster.

I also continue to be struck by the lengths some will go in order to defeat this good man and good judge. This raises the question of ''Why?'' Why do liberal special interest groups and their allies in this body oppose Judge Alito so vehemently?

I believe, at bottom, the reason they oppose his nomination is because he has refused to do their bidding. After all, Judge Alito is a judge who believes in judicial restraint, who understands the differences between the roles judges and legislators—elected representatives of the people—are to play in our government. He believes judges should respect the legislative choices made by the American people through their representatives. And he believes, as I do, judges have no warrant to impose their own beliefs on the rest of us under the guise of interpreting the Constitution.

It is sad but true that the prospect of a Supreme Court Justice who will respect the legislative choices of the American people scares the living daylights out of these interest groups and their allies. Why? Because the legislative choices of the American people are not the legislative choices of these interest groups.

There are some in this country who are entitled to their opinion but whose views are so extreme they will never prevail at the ballot box. The only way they could possibly hope to get their views enacted into law would be to circumvent the Democratic process and pack the courts with judicial activists who will impose their views on the rest of us.

What are these views? Well, one organization I think makes the point. The American Civil Liberties Union is one example. They represent child pornographers because they believe that child pornography is free speech. Yet at the same time, they litigate against schoolchildren who want to recite the Pledge of Allegiance because it invokes ''one nation under God.''

They believe the Constitution protects the right to end the life of a partially born child. Yet at the same time, they believe the Constitution does not protect marriage between only one man and one woman.

They seem to believe that criminals have more rights than victims. And they believe that terrorists should receive special rights never before afforded to enemy combatants during a time of war.

This is the hard left's version of America. It is a place where criminals and terrorists run free on technicalities, where pornographers may speak but people of faith must keep quiet, where traditional values are replaced by social experimentation.

The liberal special interest groups and those who agree with them in this body to oppose Judge Alito do so because Judge Alito's America is not the hard left's America.

What, then, is Judge Alito's America? Well, I found one of the best answers to that question in, of all places, the New York Times. On January 12, one of their columnists, David Brooks, wrote a column that captures perfectly the differences between Judge Alito's America and the America envisioned by some on the hard left.

He wrote:

If he'd been born a little earlier, Sam Alito probably would have been a Democrat. In the 1950s, the middle-class and lower-middle-class whites in places like Trenton, N.J., where Alito grew up, were the heart and soul of the Democratic party.

But by the late 1960s, cultural politics replaced New Deal politics, and liberal Democrats did their best to repel Northern white ethnic voters. Big-city liberals launched crusades against police brutality, portraying working class cops as thuggish storm troopers for the establishment.

The liberals were doves; the ethnics were hawks. The liberals had ''Question Authority'' bumper stickers; the ethnics had been taught in school to respect authority. The liberals thought that an unjust society caused poverty; the ethnics believed in working their way out of poverty.

Sam Alito emerged from his middle-class neighborhood about that time, made it to Princeton and found ''very privileged people behaving irresponsibly.''

Alito wanted to learn; the richer liberals wanted to strike. He wanted to join the ROTC; the liberal Princetonians expelled that organization from campus. He was orderly and respectful; they were disorderly and disrespectful.

Mr. Brooks continues:

If there is one lesson from the Alito hearings, it is that the Democratic Party continues to repel [middle-class white] voters just as vigorously as ever.

If you listened to the questions of [Republicans], you heard [Senators] exercised by the terror drug dealers can inflict on their neighborhoods. If you listened to the [Democrats], you heard [Senators] exercised by the terror law enforcement officials can inflict on a neighborhood.

If forced to choose, most Americans side with the party that errs on the side of the cops, not the criminals.

If you listened to [Republicans], you heard [Senators] alarmed by the threats posed by anti-American terrorists. If you listened to [Democrats], you heard Senators alarmed by the threats posed by American counterterrorists.

If forced to choose, most Americans want a party that will fight aggressively against the terrorists, not the [NSA].

He concluded:

Alito is a paragon of the old-fashioned working-class ethic. In a culture of self-aggrandizement, Alito is modest. In a culture of self-exposure, Alito is reticent. In a culture of made-for-TV sentimentalism, Alito refuses to emote. In a culture that celebrates the rebel, or the fashionable pseudorebel, Alito respects tradition, order and authority.

I read a lengthy excerpt from Mr. Brooks' column because I could not have said it better. This is Judge Alito's America. It is a place where if we err at all, we err on the side of the law, not on the side of those who break the law, where we fight terrorists, not those who try to stop those terrorists, where we work hard to get ahead, where we are more interested in getting the job done than getting credit for it. In other words, these are the middle-class traditional values of America, Sam Alito's America, and, I believe, our America. They are now apparently so foreign to many in the Democratic Party, particularly the liberal interest groups that seem to agitate for delay for delay's sake and to block an up-or-down vote on this nomination, that they will stop at nothing to oppose someone such as Judge Alito who embodies those values. You name it, whether smears, distortions or even denying the decency of an up-or-down vote, and some will do it. Judge Alito's treatment by this hard core of left-leaning groups and their supporters says more about them than it does Judge Alito.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, the Senate is about to vote on a motion to invoke cloture on the nomination of Samuel Alito to be an Associate Justice of the U.S. Supreme Court. We should not even have to take this step but should be voting instead on whether to consent to Judge Alito's appointment. But since we are being forced to take this unnecessary step, let me explain why I believe the case for both cloture and for confirmation is compelling.

Deliberation and debate are hallmarks of the Senate. Our tradition has been that once a judicial nomination

has reached the Senate floor, we debate and then we vote on confirmation. There is no need to revisit all of the arguments regarding judicial nomination filibusters. Suffice it to say that American history contains but a single example of failing to invoke cloture on and then failing to confirm a Supreme Court nomination. The 1968 nomination of Abe Fortas to be Chief Justice, however, bears no relationship to the current situation.

First, while the Fortas nomination did not have majority support, the Alito nomination clearly does. Judge Alito enjoys majority bipartisan support. I realize his opponents are not happy that Judge Alito will be confirmed; no one likes to lose. But the correct response to failure is to pick yourself up and try another day, not to rig the process to get your way.

Second, opposition to cloture on the Fortas nomination was almost evenly bipartisan, with 23 Republicans and 19 Democrats. As we are about to see, opposition to cloture on the Alito nomination will be entirely partisan. The most important reason why the Fortas cloture vote is no precedent for this one is that there had not yet been full and complete debate on the Fortas nomination when the vote ending debate occurred. Senator Robert Griffin of Michigan stated clearly at the time that not all Senators had had a chance to speak and that the debate was being kept squarely on the many serious issues and concerns raised by the Fortas nomination. Senators were debating, not obstructing, the nomination.

The same cannot be said today. Those raising this last-minute call for a filibuster have had a full and fair opportunity to air their views about this nomination. Let us not forget that debate over a nomination, especially to the Supreme Court, begins as soon as the President announces his intention to nominate. The Judiciary Committee chairman, Senator SPECTER, accommodated Democrats and waited to hold the hearing on the Alito nomination until January. In fact, the 70 days between announcement and hearing exceeded the average time for all of the current Supreme Court Justices by more than 60 percent. Nonetheless, committee Democrats insisted on delaying the nomination for an extra week.

The nomination has now been on the floor for nearly a week. While the Senator from Massachusetts, Mr. KENNEDY, says that Senators need still more time to debate, I recall the long, repeated quorum calls last week when Senators who could have spoken chose not to do so. I agree with the distinguished minority leader who last Thursday said that ''there has been adequate time for people to debate. No one can complain in this matter that there hasn't been sufficient time to talk about Judge Alito, pro or con.''

In fact, the last-ditch call for this filibuster came not from this floor or even from this country. The Senator from Massachusetts, Mr. KERRY, called for this filibuster from Switzerland. There is a difference between not having an opportunity to debate and not winning that debate. Nothing is being short circuited here. This floor has been wide open for debate. No one can even suggest that the debate has not been a full and fair one.

To their credit, some of my Democratic colleagues who oppose the nomination itself have nonetheless said that this 11th-hour filibuster attempt is not in the best interest of the Senate.

The Senator from Illinois, Mr. OBAMA, said over the weekend that the better course for Democrats is to win elections and persuade on the merits, rather than what he called overreliance on procedural maneuvers such as the filibuster. I agree.

We should not have to take this cloture vote today. It only further politicizes and distorts an already damaged judicial confirmation process. Moving beyond that, it is clear that the case for Judge Alito's confirmation is compelling. Last week I outlined three reasons why Judge Alito should be confirmed. He is highly qualified. He is a man of character and integrity, and he understands and is committed to the properly limited role of the judiciary, judges.

During the debate on this nomination, other Senators have explored these matters as well, including the Senator from Texas, Mr. CORNYN, who preceded me here today. Senator CORNYN is a distinguished member of the Judiciary Committee and a former State supreme court justice. His perspective and insight on judicial matters has been and is extremely valuable.

I wish to explore one specific issue that relates to Judge Alito's judicial philosophy which, unfortunately, has been the subject of a disinformation campaign by Judge Alito's opponents. That issue is Judge Alito's view on the role of precedent or prior judicial decisions in deciding cases. Judges settle legal disputes by applying the law to the facts in the cases that come before them. The law that judges apply to settle legal disputes comes in two basic forms.

There is the written law itself in the form of constitutional provisions, statutes, or regulations. Then there are past decisions in which the courts have addressed the same issue. The Latin phrase for following precedent or prior decisions is ''stare decisis,'' which means ''let the decision stand.'' Mr. President, every judge believes in the doctrine of stare decisis. Every judge believes that prior decisions play an important role in judicial decisionmaking. That includes Judge Alito.

As I will explain, Judge Alito's views on precedent are sound, traditional, and principled. When the Judiciary Committee hearing on this nomination opened, I outlined several rules which should guide the confirmation process. The first was that we should take parts or elements of Judge Alito's record on their own terms, in their own context for what they really are. That certainly applies to Judge Alito's views regarding the issue of precedent.

Rather than acknowledging what Judge Alito's views actually are, however, some of his opponents have created a caricature of those views, which serves their political purposes but which misleads our fellow citizens about both Judge Alito's record and this very important issue.

Let me start with Judge Alito's own words. No one expresses his view of precedent better than he does. On January 11, 2006, Judge Alito offered this summary of his views:

> I have said that stare decisis is a very important legal doctrine and that there is a general presumption that decisions of the Court will not be overruled. There needs to be a special justification for doing so, but it is not an inexorable command.

This view has several elements.

First, Judge Alito says plainly that stare decisis is a very important legal concept and doctrine. He described why he thinks precedent is so important. One of his points stood out, and I believe it is worth highlighting. Let me just refer to that point. He said:

> I think the doctrine of stare decisis is a very important doctrine . . . [I]t limits the power of the judiciary . . . it's not an inexorable command, but it is a general presumption that courts are going to follow prior precedent.

Precedent is an important element of judicial restraint. In contrast to the grandiose picture painted by some on the other side of the aisle, the judiciary doesn't exist to right all wrongs, correct all errors, heal social wounds, and otherwise usher in an age of domestic tranquility. Judges have a specific role to play, but, like legislators and the executive, they must stay in their proper place.

Judge Alito believes that giving precedent an important role in deciding cases limits the power of the judiciary. If his opponents believe instead that judges should have unlimited power and may disregard precedent at will, let them try to persuade the American people.

Let me refer again to Judge Alito's summary of his views on precedent. In addition to stare decisis being an important legal doctrine, Judge Alito also said that there is a general presumption that decisions of the Court will not be overruled. If that presumption did not exist, there would be little point in paying attention to prior decisions at all. In fact, it is that presumption which makes precedent useful in limiting the power of the judiciary.

Judge Alito also said that overruling a prior decision requires a special justification. Some of Judge Alito's opponents suggest that he has taken a careless or reckless attitude toward the precedents of the court on which he now sits. I assume that, by this suggestion, they want people to believe that

Judge Alito would play fast and loose with Supreme Court precedent once he joins the Court. The suggestion is certainly false.

Judge Alito has voted to overrule his own court's precedents only four times in the 15 years on the U.S. Court of Appeals—only four times. In each of those cases, in which all of the judges in the circuit participated, he was in the majority, and in two of them the decision was unanimous. Judge Alito has demonstrated his view that judges should not heedlessly overrule past decisions.

As he explained it, the factors helping judges to handle precedents, including ones to overrule or reaffirm them, include when a past decision has actually been challenged and the Court has decided to retain it. This would, of course, not include cases in which the validity of a prior decision was neither challenged nor decided. It is, after all, another fundamental principle of judicial restraint, which Judge Alito also endorsed, that courts should not decide constitutional questions unless absolutely necessary. That would include deciding whether prior decisions, especially on constitutional issues, should be overruled or reaffirmed.

Obviously, a court does not decide an issue unless it actually addresses and decides it, and a court cannot be said to reaffirm or uphold a prior decision unless it actually addresses or decides that issue.

That said, a court strengthens the presumption that a precedent will be followed when the court actually does reaffirm such a decision. At the same time, Judge Alito has said that adhering to prior decisions is not an inexorable command. Those are not his words. As he pointed out at his hearing, the Supreme Court has repeatedly used that language, holding over and over again that adherence to precedent is not an inexorable command.

This only makes sense. While following prior decisions is a presumption, it is a rebuttable presumption. Here is where Judge Alito's opponents cry foul the loudest and where they expose their real agenda.

Many of Judge Alito's opponents do not really care about legal doctrines; they only care about political agendas. For them, the political ends justify the judicial means, and so-called principles are infinitely flexible so long as the political goal is achieved. They do not care about precedents in general; they only care about certain precedents in particular.

While Judge Alito has presented a thoughtful, principled approach to handling any prior decision, his opponents have but one simple, hard, political rule: get your hands off the precedents we want to keep. Their rule seems to be stare decisis for me but not for thee. Reaffirm decisions we like; overrule ones we oppose. This one-way ratchet is simply a device for getting the courts to do the political heavy lifting and preserving particularly the Supreme Court's role as policymaker in chief.

The real issue for Judge Alito's opponents is not that he rules too often for this group or that group, as if judges are supposed to make the numbers satisfy some political interest group rather than faithfully apply the law. It is not really about theories such as what has been called the unitary executive, which to Judge Alito apparently means nothing more unusual than that the head of the executive branch should be able to control and lead the executive branch. It is not about guilt-by-association tactics—accusations of affiliation with groups wanting to preserve Princeton's all-male tradition made by Senators belonging to all-male clubs.

No, Mr. President, this is about abortion. That is the be-all and end-all issue of those who oppose Judge Alito. I admit there may be an exception or two over there, but I really believe it comes down to that. That is what is driving this, and that is what the outside special interests, the leftwing groups, are using to drive them. The 800-pound precedent in the room is Roe v. Wade. That is the decision Judge Alito's opponents want left alone at all costs.

Many Senators and leftwing interest groups have demanded to know whether Judge Alito, if confirmed, would ever vote to overrule Roe v. Wade. I applaud their creativity in getting as close as possible to directly asking him that question. For most of Judge Alito's opponents, whether Roe v. Wade was correctly decided doesn't matter. Whether it was a legitimate interpretation of the Constitution does not matter. No, abortion advocates take a fluidly flexible approach to precedent, at least until they get the one they want. Then they become the most rigid and doctrinaire defenders of precedent, insisting on keeping what they have. This all seems like a judicial version of ''heads I win, tails you lose.''

Mr. President, I am glad to say that Judge Alito follows principle rather than politics on the bench. Can you imagine if the attitude of his opponents regarding this one precedent, Roe v. Wade, actually prevailed across the board? What if adherence to prior decisions was actually an inexorable command? What if the Supreme Court's interpretation of the Constitution, once on the books, could never be changed? If the doctrine of stare decisis were an inexorable command, decisions such as Dred Scott v. Sanford and Plessy v. Ferguson would still be on the books.

Judge Alito put it:

I don't think anybody would want a rule in the area of constitutional law that . . . said that a constitutional decision once handed down can never be overruled.

The judiciary must be guided by principles, not by politics. The Supreme Court has repeatedly said that the role of precedent is actually the weakest in cases involving the Constitution for a very simple reason. When the Supreme Court construes one of our statutes incorrectly, we can correct that error in short order. When the Supreme Court interprets the Constitution incorrectly, correction comes only through the cumbersome constitutional amendment process or the Court's willingness to review its past decisions.

I ask unanimous consent that a list of Supreme Court decisions affirming the principle that precedent is weakest in constitutional cases be printed in the RECORD.

There being no objection, the material was ordered t9 be printed in the RECORD, as follows:

STARE DECISIS IS WEAKEST IN CONSTITUTIONAL CASES

Agostini v. *Felton*, 521 U.S. 203,235 (1997) (quoting *Payne* v. *Tennessee*, 501 U.S. 808,828 (1991))—Justice O'Connor.

''As we have often noted, '[s]tare decisis is not an inexorable command, . . .' That policy is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions.''

Payne v. *Tennessee*, 501 U.S. 808,828 (1991) (quoting *Helvering* v. *Hallock*, 309 U.S. 196,119 (1940) and *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393,407 (1932))—Chief Justice Rehnquist.

''Stare decisis is not an inexorable command; rather, it 'is a principle of policy and not a mechanical formula of adherence to the latest decision.' This is particularly true in constitutional cases, because in such cases 'correction through legislative action is practically impossible.' ''

Harmelin v. *Michigan*, 501 U.S. 957,965 (1991)—Justice Scalia.

''We have long recognized, of course, that the doctrine of stare decisis is less rigid in its application to constitutional precedents.''

Glidden Co. v. *Zdanok*, 370 U.S. 530,543 (1962)—Justice Harlan.

''. . . this Court's considered practice not to apply stare decisis as rigidly in constitutional as in nonconstitutional cases. . . .''

New York v. *United States*, 326 U.S. 572 (1946)—Justice Frankfurter.

''But throughout the history of the Court stare decisis has had only a limited application in the field of constitutional law. And it is a wise policy which largely restricts it to those areas of the law where correction can be had by legislation. Otherwise the Constitution loses the flexibility necessary if it is to serve the needs of successive generations.''

Smith v. *Allwright*, 321 U.S. 649,665 (1944)—Justice Reed.

''In constitutional questions, where correction depends upon amendment and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions.''

St. Joseph Stock Yards Co. v. *United States*, 98 U.S. 38,94 (1936)—Justices Stone and Cardozo, concurring in the result.

''The doctrine of stare decisis . . . has only a limited application in the field of constitutional law.''

Burnet v. *Coronado Oil & Gas Co.*, 285 U.S. 393,407 (1932)—Justice Brandeis, dissenting.

''[I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions.''

Mr. HATCH. Mr. President, in some of these cases, the Justice whom Judge Alito would replace, Justice Sandra Day O'Connor, is the one repeating this principle.

Let me return once again to how Judge Alito summarized his own view

of precedent. It is a very important legal doctrine that serves to limit judicial power. There is a general presumption that past decisions will not be overruled, but this is not an inexorable command.

Judge Alito takes a sound, traditional, principled view of the role of precedent in judicial decisionmaking, and I hope my colleagues will consider Judge Alito's view for what it actually is.

In closing, let me say that the debate over this nomination has been going on for about 3 months. It has been long and vigorous, both inside the Senate and across the country. I wish to note some of the opinions outside of this body on the nomination before us.

Some of my colleagues on other side of the aisle are fond of quoting liberal law professor Cass Sunstein's statistical analysis about which sides have won or lost in different categories of cases before Judge Alito. They have often said it is in his dissent that we may find his true judicial philosophy. I wonder whether they will credit Professor Sunstein's conclusions about Judge Alito's dissents, published last November in the Washington Post.

Here is what he said on the contrary:

None of Alito's opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. He does not berate his colleagues . . . Nor has Alito proclaimed an ambitious or controversial theory of interpretation. He avoids abstractions.

That was November 1, 2005.

Here is the conclusion of New York Newsday, which is titled ''Qualifications'':

Samuel Alito is a modest, decent man and an accomplished jurist, well within the country's conservative mainstream. On that basis he should be confirmed. But the Nation will need him to be a strong guardian of the constitutional rights and protections that make this country special.

I ask unanimous consent that three other editorials from the Washington Post, Chicago Tribune, and the Newark Star-Ledger be printed in the RECORD.

There being no objection, the material was ordered, to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 15, 2006]

CONFIRM SAMUEL ALITO

The Senate's decision concerning the confirmation of Samuel A. Alito Jr. is harder than the case last year of now—Chief Justice John G. Roberts Jr. Judge Alito's record raises concerns across a range of areas. His replacement of Justice Sandra Day O'Connor could alter—for the worse, from our point of view—the Supreme Court's delicate balance in important areas of constitutional law. He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set.

Though some attacks on him by Democratic senators and liberal interest groups have misrepresented his jurisprudence, Judge Alito's record is troubling in areas. His generally laudable tendency to defer to elected representatives at the state and federal levels sometimes goes too far—giving rise to concerns that he will prove too tolerant of claims of executive power in the war on terror. He has tended at times to read civil rights statutes and precedents too narrowly. He has shown excessive tolerance for aggressive police and prosecutorial tactics. There is reason to worry that he would curtail abortion rights. And his approach to the balance of power between the federal government and the states, while murky, seems unpromising. Judge Alito's record is complicated, and one can therefore argue against imputing to him any of these tendencies. Yet he is undeniably a conservative whose presence on the Supreme Court is likely to produce more conservative results than we would like to see.

Which is, of course, just what President Bush promised concerning his judicial appointments. A Supreme Court nomination isn't a forum to refight a presidential election. The president's choice is due deference—the same deference that Democratic senators would expect a Republican Senate to accord the well-qualified nominee of a Democratic president.

And Judge Alito is superbly qualified. His record on the bench is that of a thoughtful conservative, not a raging ideologue. He pays careful attention to the record and doesn't reach for the political outcomes he desires. His colleagues of all stripes speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court nominee will vote on key issues, or even what those issues will be, given how people and issues evolve. But it's fair to guess that Judge Alito will favor a judiciary that exercises restraint and does not substitute its judgment for that of the political branches in areas of their competence. That's not all bad. The Supreme Court sports a great range of ideological diversity but less disagreement about the scope of proper judicial power. The institutional self-discipline and modesty that both Judge Alito and Chief Justice Roberts profess could do the court good if taken seriously and applied apolitically.

Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines the ''mainstream'' of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No president should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

[From the Chicago Tribune, Jan. 15, 2006]

CONFIRM JUDGE ALITO

Having survived the hazing ritual known as a Senate Judiciary Committee confirmation hearing, Judge Samuel Alito Jr. has demonstrated that he should be confirmed for the Supreme Court.

He had largely done so before the hearing. His record on the bench is strong. The American Bar Association determined he is highly qualified. But he had to go through the process of proving that he could remain calm through every contorted attempt by senators to challenge his character and fitness. He has done so.

So what did we learn from the hearing?

That Alito will not prejudge matters before the court, despite the Democrats' fervent demand that he declare abortion is a matter beyond judicial review. (Good judges, he pointedly said, ''are always open to the possibility of changing their minds based on the next brief that they read or the next argument that's made by an attorney who's appearing before them or a comment that is made by a colleague ... when the judges privately discuss the case.'')

That Alito finds repugnant the views of a long departed, long forgotten Princeton organization to which he, apparently, had the slimmest of connections.

That he believes judges should rule on the law, not make law.

If Democrats on the Judiciary Committee hoped to expose him as a right-wing ideologue, they failed. They did manage, as they did last year in the confirmation hearings for Chief Justice John G. Roberts Jr., to show how pious, preening and pompous they can be.

Alito probably won't get many Democratic votes, even though he deserves their support. We'll go through the ritual of opposition senators declaring that, after careful deliberation, they cannot vote for this nominee. They've already laid the foundation, as the lawyers say; several Democrats have announced that after more than 18 hours of testimony they still have doubts about his ''credibility.''

A week of hearings. Fifteen years of judicial opinions, all available for review. But in all that, Alito's opponents have failed to unearth anything damaging—or even to elicit an intemperate remark from the judge, though they did succeed in making his wife cry. It's a wonder anyone is willing to endure this process.

The special-interest campaigns will thunder on for a few more days. Some Democrats on the committee have demanded the vote be postponed while they ponder their next moves, including a possible filibuster. What a terribly destructive move that would be.

Alito's integrity, professional competence and judicial temperament ''are of the highest standing.'' That was the judgment of the American Bar Association, reached after interviewing 300 people who know Alito and evaluating 350 of his written opinions and dozens of unpublished opinions, oral arguments and memos.

He ''sees majesty in the law, respects it, and remains a dedicated student of it to this day.'' That, too, was the judgment of the ABA.

Alito is, as his colleague, federal Appellate Judge Edward R. Becker, testified, ''a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be.''

He deserves every senator's vote.

[From the Newark Star-Ledger, Jan. 17, 2006]

CONFIRM ALITO TO THE COURT

The Senate Judiciary Committee hearings on Supreme Court nominee Samuel Alito Jr. have been a remarkable tutorial—not in the law but in just how low partisan politics have sunk.

Democrats have painted Alito as someone ready to turn back the clock 50 years on civil, reproductive and workers' rights. They have attempted to draw a public portrait of Alito, sometimes relying on half-truths, that those who know him best barely recognize. Republicans responded to this onslaught with a slew of softball questions designed not to elicit information but to present the nominee in the best possible light.

Neither side has served the public particularly well.

For their part, Senate Judiciary Committee members interjected a level of senatorial logorrhea that was stunning, droning on and on about matters that had nothing to

do with Alito's fitness to serve on the nation's highest court.

Despite the spectacle of the hearings, we are convinced Alito, a New Jerseyan who sits on the 3rd U.S. Circuit Court of Appeals, is eminently qualified to serve as an associate justice of the U.S. Supreme Court and should be confirmed by the committee and ultimately by the full Senate, and, yes, with the support of New Jersey's two Democratic senators.

Our support is not an uncritical ode to homegrown talent. It is based, in part, on the respect and praise Alito has garnered from those who have worked with him throughout his distinguished legal and judicial career. Democrats and Republicans, conservatives and liberals, many of whom, perhaps, philosophically disagree with Alito, have consistently maintained he is well-suited for the court.

We think they make a compelling case.

Among those who speak highly of him are Rutgers Law School Associate Dean Ronald Chen, an outspoken liberal who was just named by Gov.-elect Jon Corzine to be public advocate; retired Chief Judge John Gibbons of the 3rd Circuit Court of Appeals, who since leaving the bench has worked aggressively to eliminate the death penalty; well-known Democratic lawyer Douglas Eakeley, who was appointed by President Bill Clinton to the board of directors of the Legal Services Corp.; Democratic criminal defense attorney Joseph Hayden and former Attorney General Robert Del Tufo, who served in Democrat Jim Florio's cabinet and worked with Alito in the U.S. Attorney's Office.

None of these folks had to stand up for Alito, but they did.

Similarly, the judges who sit with Alito on the 3rd Circuit in Philadelphia came forth in an unprecedented show of support, insisting he was not an ideologue, had scrupulously adhered to precedent and had shown no signs of hostility toward a particular class of cases or litigants.

The American Bar Association declared Alito ''well-qualified''—the highest approval rating given by the ABA.

This is not to say we like everything we heard from Alito in the hearings.

Given our strong and long-standing support for abortion rights, we worry that Alito's refusal to describe Roe vs. Wade as settled law could mean he'll be inclined to take positions that chip away at a woman's right to abortion. At a time when questions are being raised about the abuse of presidential power in the war on terror, we're discomforted by Alito's expansive view of presidential authority.

The hard truth is that selecting nominees for the Supreme Court is a presidential choice. And it is reasonable and appropriate for a president to pick someone who reflects his values. During the 2004 presidential race, candidate George Bush made no bones about his intention, if given a chance, to select conservatives.

Some Democrats have argued against that standard. They've said nominees have to reflect a political ''mainstream.'' But if that were the case, Clinton's nomination of Ruth Bader Ginsberg would never have been confirmed by a 96–3 vote. Republicans overwhelmingly supported Ginsberg, even though she is the very picture of a left-wing ideologue. She was general counsel of the American Civil Liberties Union and directed the ACLU's Women's Rights Project, arguing numerous controversial abortion rights cases.

Alito is a conservative, but he is not an ideologue. He has demonstrated that he has the intellect and temperament to serve the nation well.

Mr. HATCH. Mr. President, I also note that the attorneys general of 20 States, Democrats and Republicans, have signed a letter urging this body to confirm Judge Alito. I am proud that Mark Shurtleff, attorney general of my home State of Utah, is among them. They write:

Judge Alito represents the best of the Federal bench and we believe he will be an excellent Supreme Court justice.

I agree, and I ask unanimous consent that this letter be printed into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JANUARY 6, 2006.

Re Judicial confirmation of Judge Samuel A. Alito, Jr., to the Supreme Court of the United States.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST, MINORITY LEADER REID, CHAIRMAN SPECTER, AND RANKING MEMBER LEAHY: We, the undersigned Attorneys General of our respective states, are writing in support of the confirmation of Judge Samuel A. Alito, Jr., to serve as an Associate Justice on the Supreme Court of the United States.

We are confident that Judge Alito will bring to the Court not only years of legal experience and judicial temperament, but also modesty and great personal character.

We reflect diverse views and constituencies and are united in our belief that Judge Alito will be an outstanding Supreme Court Justice and should be confirmed by the United States Senate.

As the Senate prepares for the confirmation process of Judge Alito, it is important to look beyond partisan politics and ideology and focus on the judicial experience of this extremely well qualified nominee. Judge Alito has served the United States as an Assistant to the Solicitor General, as a United States Attorney, and for the past 15 years, as a Judge on the Third Circuit Court of Appeals.

Judge Alito's record on the Third Circuit Court of Appeals demonstrates judicial restraint. He has proven that he seeks to apply the law and does not legislate from the bench. Judge Alito's judgments while on the bench have relied on legal precedent and current law, and he has a long-standing reputation for being both tough and fair. In short, Judge Alito represents the best of the federal bench and we believe he will be an excellent Supreme Court Justice.

We urge the Senate to hold an up or down vote and confirm Judge Alito.

Sincerely,

John W. Suthers, Attorney General of Colorado; Troy King, Attorney General of Alabama; Charlie Crist, Attorney General of Florida; Lawrence Wasden, Attorney General of Idaho; Tom Corbett, Attorney General of Pennsylvania; David W. Márquez, Attorney General of Alaska; Mark J. Bennett, Attorney General of Hawaii; Stephen Carter, Attorney General of Indiana; Phill Kline, Attorney General of Kansas; Jon Bruning, Attorney General of Nebraska.

Wayne Stenehjem, Attorney General of North Dakota; Henry McMaster, Attorney General of South Carolina; Lawrence Long, Attorney General of South Dakota; Judith Williams Jagdmann, Attorney General of Virginia; Michael A. Cox, Attorney General of Michigan; George Chanos, Attorney General of Nevada; Jim Petro, Attorney General of Ohio; Greg Abbott, Attorney General of Texas; Mark Shurtleff, Attorney General of Utah; Rob McKenna, Attorney General of Washington.

Mr. HATCH. Mr. President, the votes we take today and tomorrow give us an important opportunity. The Los Angeles Times editorial of January 15, 2006, got it right, saying that trying to derail this nomination by filibuster rather than on the merits is wrong.

I urge my colleagues to preserve this body's tradition by rejecting this desperate filibuster attempt, and then in a vote tomorrow, I urge my colleagues to honor the judiciary's important but limited role in our system of government by confirming this qualified and honorable man to the Supreme Court of the United States of America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, it is time for the debate on the nomination of Judge Alito to end. It is time for the Senate to act on the President's nomination of Samuel Alito to serve as a Justice on the U.S. Supreme Court.

We have had ample time to review this nomination. The Judiciary Committee has conducted a thorough review of Judge Alito's background and qualifications. Senator SPECTER, as chairman of the Judiciary Committee, ensured that all the questions that should be asked of this nominee were asked and answered.

The Judiciary Committee thoroughly reviewed the story of Judge Alito's life and questioned him on a wide range of issues. In the process, Judge Alito demonstrated his ability, intelligence, and his fitness to serve as a Justice on the U.S. Supreme Court.

In almost 3 months of intense scrutiny and over 18 hours of personal testimony before the Senate Judiciary Committee, Judge Alito provided clear and candid answers to all the questions that were asked.

All Senators have had an opportunity to meet with Judge Alito, to review the opinions he has written, to read the articles he has written in law reviews and other publications, to become familiar—as familiar as anyone can—with his thinking, his judicial philosophy, his past performance as a judge, as a solicitor, as a lawyer in private practice, as a student in law school, and as a fellow judge. Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

In my opinion, the most impressive and persuasive testimony at the hearings in the committee came from the panel of judges with whom he served on the Third Circuit Court of Appeals. They testified before the committee

and discussed the way Judge Alito approached questions before that court, the way he acted during deliberations among other members of the court about the decision that should be reached in each case, and generally the way he went about discharging the enormously important duties he had as a member of that court. And despite differences in politics and viewpoints and backgrounds among some of the judges with him, they were all enthusiastically supporting his confirmation for service on the Supreme Court.

Judge Alito has earned the respect of those who know him best—his colleagues on the Federal courts, as well as his current and former law clerks, and the members of the bar who have appeared before him in court. He is widely respected for his even temperament, his integrity, his sound legal judgment, and his respect and courtesy for others.

I am confident Judge Alito will serve with great distinction as a Justice on the Supreme Court. I think reciting Judge Alito's own words is the best way for me to conclude my remarks. He said:

> Fifteen years ago, when I was sworn in as a judge of the Court of Appeals, I took an oath. I put my hand on the Bible, and I swore that I would administer justice without respect to persons, that I would do equal right to the poor and the rich, and that I would carry out my duties under the Constitution and the laws of the United States. And that is what I have tried to do to the very best of my ability for the past 15 years. And if I am confirmed, I pledge to you that that is what I would do on the Supreme Court.

It is time to end this debate. It is time to confirm the President's nomination of Judge Samuel Alito.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I know there are a number of people who wish to speak on Judge Alito. I want to add a few comments of my own on this nomination. If I may inquire of the Chair, is there time that needs to be yielded?

The PRESIDING OFFICER. The Senator may speak up until 4 o'clock.

Mr. BROWNBACK. I thank the Chair.

Mr. President, I sat in on the hearings for Judge Alito. I personally interviewed Judge Alito. I talked with him in my office. I sat through the hearings and was able to question him in the Judiciary Committee. I am on the Judiciary Committee, so I sat through those hearings to hear his testimony. I feel as if we had a good chance to take the measure of the man, and he is outstanding. I believe he is going to be an outstanding jurist.

He answered hundreds of questions, more than I believe any prior nominee has answered in the history of the Republic. He answered them deftly. He answered them with an encyclopedic knowledge of the law. It was amazing to me to see that he did not have a note in front of him the whole time, and if you asked him any constitutional question on any case at any time in the history of the Republic, he would say here are the facts of that case, here is how the law was decided, this case is still in question or it isn't. He is a brilliant jurist. He wasn't particularly good on international law, and I was particularly glad to hear he wasn't good on law, on what would happen in other countries.

He has a long history on the bench which I think is important. For a series of years now, only so-called stealth candidates could be approved. Judge Alito is a man with years of experience on the Third Circuit Court of Appeals. He has written a number of opinions that we could dissect them and see. People were looking into his background, trying to determine does he lean this way or that way, but he has hundreds of published opinions, and through them we can see which way he leans.

He is a known commodity—well known, well respected, and well regarded across the board. I do think where he is going to contribute to the country, the Republic, is in the areas of religious freedom and free expression. This has not gotten much play at all in the media or in much of the hearings, but it is one of the areas he has written the most extensively on and in which he is a legal scholar.

He believes in a robust public square, a public square where we can celebrate faith, and where faith can be presented. He believes in this for all faiths and faith traditions. You see that in cases where he has ruled in favor of menorah candles being put forward, Christmas trees, and Muslim police officers being able to dress appropriately to their religion and still be able to be police officers.

He believes in a separation of church and state, but he also believes this is a country full of people of faith and that they should, under the free expression clause, be allowed to express and to live that faith and to be able to show it. I think he is very clear and thoughtful.

If there is an area of the law that needs clarity, it is this because we have rules and tests all over the country. I think he is going to contribute in this area. This is one of the areas that did not get much review, it did not get much comment, but I think he is going to make a clear impression, and I think he is going to make a very helpful impression for this Nation whose motto, as the Chair looks at it, is ''In God We Trust.''

There is a reason for that. This is a nation of faith. It is one we seek to celebrate, not have an imprimatur from the state saying this is the religion or that is the religion, but rather saying we want you all to be here, have your own faith, be able to celebrate it, and be able to bring it forward in this Nation. I think he is going to contribute greatly in this particular category.

The area of abortion got the most review, and it is unknown how he would rule in the case of Roe v. Wade or anything along that line. He did not state an opinion one way or the other. It is an area of open case law. It is an area, in my opinion, that is not in the Constitution. There is no constitutional right for a woman to abort her child. I believe it to be a matter that should be decided by bodies such as this, or in States around the country.

I remind my colleagues, as they all know, if Roe v. Wade or any portion of it were overturned, the issue goes back to the States. That is the group, that is the body that resolves this issue. It is not something where the ruling automatically shuts everything down. What happens is it goes back and California decides its rules and New York, Florida, Kansas, Minnesota, and other States decide theirs.

I don't see what is so untrustworthy about States resolving this issue. They did prior to 1973, and we didn't have near the level of conflict or difficulty in this country on those laws when the States were resolving these issues.

I strongly doubt all the States would resolve them the same. I doubt a State in a certain part of the country would be identical to another one. Yet I do think it would reflect the will of the people. But we do not know how Judge Alito he will rule on this issue. The Democrats don't know, the Republicans don't know, I don't know. This is an issue I care deeply about, and we don't know. That is probably as it should be because it is an area of active case law and one that is going to come in front of us.

The other area he was challenged so much on was Executive rights and privileges. I believe this man will be very clear in standing up to the executive branch when the executive branch needs to be held in check. I have no doubt at all about that.

One area we talked about that has not again gotten much review, but needs a lot, is the area of judicial restraint. We need a judiciary that will restrain itself. There are three separate branches of Government, each having a sphere and not to overlap the other. The judiciary has not restrained itself in the past. Judge Alito, along with John Roberts, previously coming before the committee and this body, both spoke significantly and clearly about the need for judicial restraint. I believe if we don't start seeing a judiciary that shows some restraint and says it is not an all-powerful judiciary in every area, it cannot appropriate money, that is left to the Congress, that we will start to see these bodies remove judicial review by the Congress, as is allowed in the Constitution. It is not an area that has been used much, but I think we are going to start seeing it used much

more, if the judiciary does not show some level of restraint. This has been expressed by both John Roberts and Samuel Alito.

I believe Judge Alito will be an outstanding jurist if we are able to get cloture in this body to end debate, to get the 60 votes necessary to end debate. He is one of the most qualified individuals we have had. His is a beautiful story of immigrant parents coming to the United States and working hard to get a good education.

He is one of sterling character. Probably one of the saddest chapters that has taken place is the challenge to his character, which is nothing short of sterling. This is a gentleman who has worked all his life to uphold the traditions of his family, to make his family proud and see his dad pleased that his son stood for right against wrong.

At the end of the day, I believe he will exercise justice and righteousness, doing both what is just and what is right. That is what we need in this country, a country that is both just and right.

In the greatest traditions of this Nation, we need to do what is right, and we need to be just to the strong, to the weak, to those who cannot speak for themselves. We need to stand up and speak for their rights even if they cannot speak for their own.

I support the nomination and yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the Democratic leader or his designee shall be recognized for 15 minutes.

Mr. KERRY. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I have heard a lot of my colleagues rely on the ABA's determination that Judge Alito is ''well qualified'' as a reason—sometimes as reason enough—to vote for his confirmation. But there is a reason why an ABA ranking alone is not all that is required to be confirmed to the bench, let alone the highest Court in the land.

With a decision as fundamental—as irrevocable—and as important to the American people as the confirmation of a Supreme Court Justice, it is important we tell the Americans the full story about the ABA and those rankings.

When making its determination, the ABA considers analytical skills. They consider knowledge of the law. They consider integrity, professional competence, and judicial temperament. But United States Senators must consider more than these criteria.

What the ABA does not look at is the balance of the Supreme Court. What they do not look at is ideology. What they do not look at is judicial activism. What they do not look at is the consequences of a judge's ideologically driven decisions for those who have been wronged and who just want to get their day in court. No matter how smart he may be, no matter how cleverly his opinions may be written, no matter how skillfully he manipulates the law, their standards don't consider the impact of his decisions on average Americans. In short, they don't measure what will happen to average Americans if Judge Alito becomes Justice Alito. That is our job.

None of these measurements consider whether Judge Alito routinely cuts off access to justice for the most disadvantaged Americans—those that need it the most. They don't ask whether he consistently excuses excessive government force when it intrudes into the privacy of individuals. They don't consider that the only statement he has ever made about a woman's right to privacy is that she doesn't have one.

These are things that we must consider here in the United States Senate. These are things that are on the line in this vote this afternoon. And these are the things that I believe most Americans want us to consider. We have to consider whether a judge we confirm to a lifetime appointment to the Supreme Court will undermine the laws that we have already passed that benefit millions of Americans, like the Family Medical Leave Act. We have to consider whether Judge Alito will place barriers in the way of addressing discrimination, whether he will serve as an effective check on the abuse of executive power, whether he will roll back women's privacy rights or whether he will enforce the rights and liberties that generations of Americans have fought and bled and even died to protect. None of the rights we are talking about came easily in this country. There were always those in positions of power who fought back and resisted. What we need in a Justice is somebody who is sensitive to that history. Senator after Senator has described specific cases and the way in which Judge Alito has had a negative impact in these areas—often standing alone, in dissent against mainstream beliefs.

This long record is a record that gave the extreme right wing cause for public celebration with his nomination. That just about tells you what you need to know. The vote today is whether we will take a stand against ideological courtpacking.

Nothing can erase Judge Alito's record. We all know what we are getting. No one will be able to say, in 5 to 10 years, that they are surprised by the decisions Judge Alito makes from the bench. People who believe in privacy rights, who fight for the rights of the most disadvantaged, who believe in balancing the power between the President and Congress need to take a stand now.

I understand that, for many, voting for cloture on a judicial nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some, a nomination must be an ''extraordinary circumstance'' in order to justify that vote. Well, I believe this nomination is an extraordinary circumstance. What could possibly be more important than this—an entire shift in the direction of the Court?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard by a jury. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law rather than protecting our system of checks and balances. These questions do not arise out of speculation. They do not arise out of mere statement. They arise out of the record the judge has carved for himself.

These issues and the threat that Judge Alito's nomination poses to the balance that the Supreme Court has upheld in all the years that Justice O'Connor has served there—all of this constitutes an ''extraordinary circumstance.''

I understand that many Senators oppose this nomination, and I believe the vote tomorrow will indicate that if we are not successful today. They say that they understand the threat Judge Alito poses, but they argue that somehow a vote to extend debate, when there have been a mere 30 hours or so of debate, is different. I do not believe it is. I believe it is the only way that those of us in the minority have a real voice in the selection of this Justice or any Justice. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can be a voice for those Americans who do not have a voice today. It is the only way we can stop a confirmation that we feel will certainly cause irreversible harm to the principles and values that make a real difference in the lives of average Americans. It is the only way we can keep faith with our belief, and the Constitution's promise, of equal justice. That is a position that we can and we should defend anywhere, at any time.

I thank those who have stood to be counted in this effort and who will continue to take a stand with their vote. I particularly thank my senior colleague from Massachusetts, Senator KENNEDY.

I think the remainder of the time Senator KENNEDY will use.

Mr. KENNEDY. I have 7½ minutes, am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I will yield myself 7 minutes.

First of all, I thank my friend, Senator KERRY, for his strong commitment on this issue and his eloquence, passion, and support of this position. This is a time in the Senate that a battle needs to be fought. This vote that we are casting with regard to Judge Alito is going to have echoes for years and years to come. It is going to be a defining vote about the Constitution of the

United States, about our protections of our rights and our liberties in the Constitution of the United States.

People in my State at this particular time are concerned about the difficulties they are having with prescription drugs. They are concerned about the problems they are having in paying their oil bills. They are concerned about their problems in paying for the education of their children. They are troubled by what they see as a result of Katrina. They are bothered by what they hear about the corruption in Washington and are deeply troubled by what is happening in Iraq. They have not had a chance to focus on what is the meaning of this vote in the Senate this afternoon.

But all you have to do is look back into history. Look back into the history of the judiciary. Look back to the history of the Fifth Circuit that was making the decisions in the 1950s. Look at the record of Justice Wisdom, Judge Tuttle, Judge Johnson of Alabama and the courage they demonstrated that said at last we are going to break down the walls of discrimination in this country that have gripped this Nation for 200 years. Our Founding Fathers failed the test when they wrote slavery into the Constitution. Abraham Lincoln pointed the way, and we passed the 13th, 14th, and 15th amendments and had a Civil War, but we did not resolve this issue. It was only until the courage of members of—what branch of Government? Not the Congress. Not the Senate. Not the executive. The judiciary, the Fifth Circuit. We are talking now about the Supreme Court, but they are the ones who changed this country inevitably with what we call the march toward progress, the march toward knocking down the walls of discrimination that permitted us to pass the 1964 Civil Rights Act in public accommodations, so people whose skin was not White could go into restaurants and hotels—public accommodations; the 1965 act for voting, voting rights; the 1968 act on public accommodations; the 1973 act to say that women are going to be treated equally; the Americans with Disabilities Act that say the disabled are going to be part of the American family. All of that is the march to progress. My friends, the one organization, the one institution that protects it is the Supreme Court of the United States.

Too much blood has been shed in those battles, too much sweat, too many tears, to put at risk that march for progress. And that is what we are doing with this nominee. He failed to demonstrate before the Judiciary Committee that he was committed to the continued march toward progress. He doesn't have to say how he is going to vote on a particular case, but he has to make it clear that he understands what this Nation is all about, why we are the envy of the world with the progress that we have made to knock down the walls of discrimination and prejudice and open up new opportunities for progress for our people. That is the definition of America.

Why are we going to put that at risk by putting someone on the Supreme Court who is not committed to that progress? We are not asking that they take a particular position on an issue. That is what is before us. We have a responsibility to try to present this to the American people. Our constituents who are working hard, taking care of their kids, trying to do a job across this country—they are beginning to focus on it. It came to the Senate floor last Wednesday. Today is Monday. What is the next business? What is the next measure on the calendar? Asbestos? Isn't that interesting? Is there anything more important than spending time and permitting the American people to understand this issue? I don't believe so, and that is what our vote at 4:30 is about.

If you are concerned and you want a Justice who is going to stand for the working men and women in this country—it is not going to be Judge Alito. If you are concerned about women's privacy rights, about the opportunity for women to gain fair employment in America—it is not Judge Alito. If you care about the disabled, the Rehabilitation Act that we passed, the IDEA Act to include children in our schools, that we passed, that has been on the books for 25 years, the Americans with Disabilities Act that we have passed to bring all of the disabled into our society, if you are looking for someone who is going to be a friend of the disabled—it is not going to be Judge Alito.

Finally, if you are looking for someone who is going to be willing to stand up to the executive branch of Government at a time that he is going to exceed his power and authority and the law of this country—it is not going to be Judge Alito. It is not going to be. He is not going to be similar to Sandra Day O'Connor who, in the Hamdi case, said: Oh, no. No President, even in times of war, is above the law in this country. He is not going to be similar to Warren Burger, who said ''No, Mr. President. No, you have to surrender the papers,'' at the time of the Watergate break-ins. ''No, Mr. President.''

This is the time. This is the issue. This happens to be the wrong judge at the wrong time for the wrong Court.

I hope this body will give us the time to be able to explain this in greater detail to our fellow Americans so a real vote can be taken. When it is, I believe this nominee will not be approved.

I understand my time has expired.

Mr. LEAHY. Mr. President, I began the hearing on this nomination by putting forward what for me was the ultimate question during the consideration of a successor to Justice Sandra Day O'Connor: Would Judge Alito, if confirmed by the Senate to the Supreme Court, protect the rights and liberties of all Americans and serve as an effective check on government overreaching?

Since this debate began last Wednesday, I have posed the fundamental question that this nomination raises for this body: whether the Senate will serve its constitutional role as a check on Executive power by preserving the Supreme Court as a constitutional check on the expansion of Presidential power.

This is a nomination that I fear threatens the fundamental rights and liberties of all Americans now and for generations to come. As astonishing as the facts may seem, it does not overstate them to point out that the President is in the midst of a radical realignment of the powers of the government and of its intrusiveness into the private lives of Americans. This nomination is part and parcel of that plan. I am concerned that if confirmed, this nominee will further erode the checks and balances that have protected our constitutional rights for more than 200 years. This is a critical nomination, one that can tip the balance on the Supreme Court radically away from constitutional checks and balances and the protection of Americans' fundamental rights.

The procedural vote just taken was in large measure symbolic. Its result was foreseen by Senators on both sides of the aisle and on both sides of the question. The next vote the Senate takes on this critical nomination is not symbolic. It has real consequences in the lives of the 295 million Americans alive today, and it will influence the lives of generations of Americans to come. It will affect not only our rights but the fundamental rights and liberties of our children and our children's children. In short, it matters, and it matters greatly. The vote the Senate will take tomorrow will determine whether Samuel A. Alito, Jr., replaces Justice Sandra Day O'Connor on the Supreme Court of the United States.

I appreciate why Senators who voted against cloture believe this matter deserves more searching attention by Senators and the American people. Among Democratic Senators, each is voting his or her conscience and best judgment. There will be many Democratic Senators who, like the Democratic members of the Judiciary Committee who have closely studied the record of this nominee, will be voting against the nomination. There will be some Democratic Senators who will vote to confirm the nominee. Among those voting against, there are some who believe that it is not appropriate to withhold the Senate's consent by extending debate. The Senate debated Chief Justice Roberts' nomination during 8 days and over a 10-day calendar period. Although much more divisive and controversial, the Alito nomination will be debated for just 5 days over a 7-day calendar period by the time the vote is called tomorrow.

It is true that Democratic Senators do not all vote in lockstep. Each Democratic Senator individually gives these questions serious consideration. They honor their constitutional duty. I am

proud of the Democratic members of the Judiciary Committee for the statements they made last week when the committee considered this nomination and during the course of the last few days. Their hard work in preparing for three Supreme Court nominations over the last few months is to be commended. I thank and commend the many Democratic Senators who came to the floor, who spoke, who set forth their concerns and their views. That includes Democratic Senators opposing the nomination and those in favor. It is quite a roster: Senators KENNEDY, DURBIN, MIKULSKI, CLINTON, KERRY, NELSON of Florida, REED, MURRAY, FEINSTEIN, INOUYE, HARKIN, BINGAMAN, LINCOLN, LIEBERMAN, SALAZAR, CARPER, LEVIN, OBAMA, DAYTON, FEINGOLD, JOHNSON, SARBANES, STABENOW, LAUTENBERG, MENENDEZ, and, in addition, Senator JEFFORDS. These Senators approached the matter seriously, in contrast to those partisan cheerleaders who rallied behind this White House's pick long before the first day of hearings.

I respect those Senators who are giving this critical nomination serious consideration but come to a different conclusion than I, just as I continue to respect the 22 Senators who voted against the Roberts nomination. I have candidly acknowledged that over the course of history, their judgment and vote may prove right. I took Judge Roberts at his word in the belief that his words and the impressions he understood them to be creating had meaning. I continue to hope that as Chief Justice he will fulfill his promise and steer the Court to serve as an appropriate check on abuses of Presidential power and protect the fundamental liberties and rights of all Americans.

Filibusters of judicial nominees—and, in particular, of Supreme Court nominees—are hardly something new. When Justice Fortas was nominated by President Johnson to be the Chief Justice, a filibuster led by Strom Thurmond and the Republican leader resulted in an unsuccessful cloture vote and in that nomination being withdrawn. That was the most recent successful filibuster of a Supreme Court nominee. But that was not the first or last Supreme Court nomination to be defeated. President George Washington, the Nation's first and most popular President, saw the Senate reject his nomination of John Rutledge to the Supreme Court at the outset of our history. Over time approximately one-fifth of Presidents' Supreme Court nominees have not been confirmed.

The last time the country was faced with the retirement of the pivotal vote on the Supreme Court was when Justice Lewis Powell resigned in 1987. A Republican President sought to use that opportunity to reshape the U.S. Supreme Court with his nomination of Judge Robert Bork. Judge Bork had been a law professor, a partner in one of the Nation's leading law firms, a judge on the DC Circuit for 5 years, and he had served as Solicitor General of the United States and even as the Acting Attorney General at a critical juncture of our history.

Many myths have arisen about why the Senate rejected that nomination. I was here and, along with the other Senators, both Republican and Democratic, who voted to defeat that nomination, I know that the nominee's views were the decisive factor in his failure. His rejection of the constitutional right to privacy was a large part of his own undoing. Soon thereafter, President Reagan announced and withdrew the nomination of Judge Ginsburg and then turned to a conservative Federal appellate court judge from California named Anthony Kennedy. Justice Kennedy, though conservative, was confirmed overwhelmingly and in bipartisan fashion. He continues to serve as a respected Justice who has authored key decisions protecting Americans from unfair discrimination because of their sexual orientation.

When the Senate was considering a successor to Justice Powell almost 20 years ago, I said that I believed a Supreme Court nominee's judicial philosophy should play a central role in our consideration. I noted:

> There is no question that the nominee who is confirmed to succeed Justice Lewis Powell will be uniquely influential in determining the direction of the Supreme Court's interpretation of the Constitution for years to come. There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the rule of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy.

The same remains true today as we consider a successor to Justice Sandra Day O'Connor. I strongly believe that Judge Alito's judicial philosophy is too deferential to the government and too unprotective of the fundamental liberties and rights of ordinary Americans for his nomination by President Bush to be confirmed by the Senate as the replacement for Justice O'Connor.

Judicial philosophy comes into play time and again as Supreme Court justices wrestle with serious questions about which they do not all agree. These include fundamental questions about how far the government may intrude into our personal lives. Senators need to assess whether a nominee will protect fundamental rights if confirmed to be on the Supreme Court.

Several Republican Senators said that judicial philosophy and personal views do not matter because judges should just apply the rule of law as if it were some mechanical calculation. Senator FEINSTEIN made this point exceptionally well during the debate. Personal views and judicial philosophy often come into play on close and controversial cases. We all know this to be true. Why else did Republican supporters force President Bush to withdraw his previous nominee for this vacancy, Harriet Miers, before she even had a hearing? She failed their judicial philosophy litmus test.

Indeed, Harriet Miers is the most recent Supreme Court nominee not to have been confirmed. It was last October that President Bush nominated his White House Counsel Harriet Miers to succeed Justice O'Connor. He did so after the death of the Chief Justice and withdrawing his earlier nomination of Judge Roberts to succeed Justice O'Connor. The democratic leader of the Senate quickly endorsed the selection of Ms. Miers as the kind of person, with the kind of background, he found appealing. Democratic Senators went about the serious business of preparing for hearings on the Miers nomination. But there were those from among the President's supporters who castigated Ms. Miers and the President for the nomination. The President succumbed to the partisan pressure from the extreme rightwing of his own party by withdrawing his nomination of Harriet Miers to the Supreme Court after repeatedly saying that he would never do so. In essence, he allowed his choice to be vetoed by an extreme faction within his party, before hearings or a vote. As Chairman SPECTER has often said, they ran her out of town on a rail. In fact, of course, she has remained in town as the President's counsel, but his point is correct. Like the more than 60 moderate and qualified judicial nominees of President Clinton on whom Republicans would neither hold hearings or votes, the Miers nomination was killed by Republicans without a vote—by what was in essence a pocket filibuster. That eye-opening experience for the country demonstrated what a vocal faction of the Republican Party really wants. Their rightwing litmus test demands justice and judges who will guarantee the results that they want. They do not want an independent federal judiciary. They want certain results.

Instead of uniting the country through his third choice to succeed Justice O'Connor, the President has chosen to reward one faction of his party, at the risk of dividing the country. Those so critical of his choice of Harriet Miers as a nominee were the very people who rushed to endorse the nomination of Judge Alito. Instead of rewarding his most virulent supporters, the President should have rewarded the American people with a unifying choice that would have broad support. America could have done better through consultation to select one of the many consensus conservative Republican candidates who could have been overwhelmingly approved by the Senate. Instead, without consultation, the President withdrew the Miers nomination and the next day announced that his third choice to succeed Justice O'Connor was Judge Alito.

At his hearing, Judge Alito began by asking how he got this critical nomination. Over the course of the hearings, I think we began to understand the real answer to that question. It has little to do with Judge Alito's family story and a great deal to do with the pressures

that forced the President to withdraw the nomination of Harriet Miers and this President's efforts to avoid any check on his expansive claims to power.

This is a President who has been conducting secret and warrantless eavesdropping on Americans for more than 4 years. This President has made the most expansive claims of power since American patriots fought the war of independence to rid themselves of the overbearing power of King George III. He has done so to justify illegal spying on Americans, to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say so without judicial review or due process. This is a time in our history when the protections of Americans' liberties are at risk as are the checks and balances that have served to constrain abuses of power for more than 200 years.

Judge Alito's opening statement skipped over the reasons he was chosen. He ignored his seeking political appointment within the Meese Justice Department by proclaiming his commitment to an extreme and activist rightwing legal philosophy. His testimony sought to minimize the Federalist Society and his seeking to use membership in Concerned Alumni of Princeton for advancement. He attempted to revise and redefine the theory of the ''unitary executive.'' That is a legal underpinning being used by this President and his supporters to attempt to justify his assertions of virtually unlimited power. The President wanted a reliable Justice who would uphold his assertions of power, his most extreme supporters want someone who will revisit the constitutional protection of privacy rights, and the business supporters wanted someone favorable to powerful special interests.

Supreme Court nominations should not be conducted through a series of winks and nods designed to reassure the most extreme Republican factions while leaving the American people in the dark. No President should be allowed to pack the courts, and especially the Supreme Court, with nominees selected to enshrine Presidential claims of government power. The checks and balances that should be provided by the courts, Congress, and the Constitution are too important to be sacrificed to a narrow, partisan agenda. The Senate stood up to President Roosevelt when he proposed a court-packing scheme and should not be a rubberstamp to this President's effort to move the law dramatically to the right. I do not intend to lend my support to an effort by this President to undermine checks and balances or to move the Supreme Court and the law radically to the right.

So what do we know about the Samuel Alito who graduated from Princeton University and Yale Law School and obtained a plum job in the office of the Solicitor General of the United States? We know that he wanted political advancement and was committed to the radical legal theories of the Meese Justice Department. The job application that was the subject of some question at the hearing is most revealing. I will ask that a copy of that job application be printed in the RECORD at the conclusion of my statement so that the American people can see it.

This confirmation process is the opportunity for the American people to learn what Samuel Alito thinks about their fundamental constitutional rights and whether he will serve to protect their liberty, their privacy and their autonomy from Government intrusion. The Supreme Court belongs to all Americans, not just the person occupying the White House, and not just to a narrow faction of a political party.

We have heard from Judge Alito's supporters that those opposing this nomination were ''smearing'' him by asking substantive and probing questions at the hearing and by addressing concerns about his record during this debate. The Republican leader opened the debate with that attack. He said this before a single minute of debate or opening statement by any Democratic Senator. These Republican talking points ring hollow and are particularly inappropriate after President Bush was forced by an extreme faction in his own party to withdraw his nomination of Harriet Miers.

Democratic Senators should not be criticized for taking seriously their constitutional role in trying to assess whether Judge Alito is suitable for a lifetime position on the Supreme Court. Democrats also asked tough questions of Justices Ginsburg and Breyer during their confirmation hearings, which is in stark contrast to the free pass given to Judge Alito by Republican Senators during his hearing.

Those critical of the Democrats have a short and selective historical memory. Republican Senators engaged in a party-line vote in committee against the nomination of Louis Brandeis to the Supreme Court. Republican Senators, in an unprecedented party-line vote, blocked the nomination in 1999 of Missouri Supreme Court Justice Ronnie White, an extremely qualified nominee for a Federal district court judgeship. In fact, Republicans pocket-filibustered more than 60 of President Clinton's judicial nominees by holding them up in the Judiciary Committee.

This President continues to choose confrontation over consensus and to be a divider rather than being the uniter that he promised to be. This is in stark contrast to President Clinton's selection of Justices Ginsburg and Breyer after real consultation. In his book, ''Square Peg,'' Senator HATCH described how in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. Senator HATCH recounted that he warned President Clinton away from a nominee whose confirmation he believed ''would not be easy.'' He wrote that he then suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed ''with relative ease.'' President Bush, who had promised to be a uniter, not a divider, failed to live up to his promise or to the example of his predecessor, as described by Senator HATCH. The result is that, rather than sending us a nominee for all Americans, the President chose a divisive nominee who raises grave concerns about whether he will be a check on Presidential power and whether he understands the role of the courts in protecting fundamental rights.

The Supreme Court is the ultimate check and balance in our system. Independence of the courts and its members is crucial to our democracy and way of life. The Senate should never be allowed to become a rubberstamp, and neither should the Supreme Court.

This is a nomination to a lifetime seat on the Nation's highest Court that has often represented the decisive vote on constitutional issues. The Senate needs to make an informed decision about this nomination. This process is the only opportunity that the American people and their representatives have to consider the suitability of the nominee to serve as a final arbiter of the meaning of Constitution and the law. Has he demonstrated a commitment to the fundamental rights of all Americans? Will he allow the government to intrude on Americans' personal privacy and freedoms?

In a time when this administration seems intent on accumulating unchecked power, Judge Alito's views on government power are especially important. It is important to know whether he would serve with judicial independence or as a surrogate for the President who nominated him. Based on a thorough review of his record and that from his hearing, I have no confidence that he will act as an effective check on government overreaching and abuses of power.

As we began the hearings, I recalled the photograph that hangs in the National Constitution Center in Philadelphia, PA. It shows the first woman ever to serve on the Supreme Court of the United States taking the oath of office in 1981. Justice Sandra Day O'Connor served as a model Supreme Court Justice.

She is widely recognized as a jurist with practical values and a sense of the consequences of the legal decisions being made by the Supreme Court. I regret that some on the extreme right have been so critical of Justice O'Connor and have adamantly opposed the naming of a successor who shares her judicial philosophy and qualities. Their criticism reflects poorly upon them. It does nothing to tarnish the record of the first woman to serve as an Associate Justice of the Supreme Court of the United States. She is a Justice whose graciousness and sense of duty

fuels her continued service nearly 7 months after she announced her intention to retire.

As the Senate prepares to vote on President Bush's current nomination—his third—for a successor to Justice O'Connor, we should be mindful of her critical role on the Supreme Court. Her legacy is one of fairness that I want to see preserved. Justice O'Connor has been a guardian of the protections the Constitution provides the American people.

Of fundamental importance, she has come to provide balance and a check on government intrusion into our personal privacy and freedoms. In the Hamdi decision, she rejected the Bush administration's claim that it could indefinitely detain a U.S. citizen. She upheld the fundamental principle of judicial review over the exercise of government power and wrote that even war ''is not a blank check for the President when it comes to the rights of the Nation's citizens.'' She held that even this President is not above the law.

Her judgment has also been crucial in protecting our environmental rights. She joined in 5-to-4 majorities affirming reproductive freedom, religious freedom, and the Voting Rights Act. Each of these cases makes clear how important a single Supreme Court Justice is.

It is as the elected representatives of the American people—all of the people—that we in the Senate are charged with the responsibility to examine whether to entrust their precious rights and liberties to this nominee. The Constitution is their document. It guarantees their rights from the heavy hand of government intrusion and their individual liberties to freedom of speech and religion, to equal treatment, to due process and to privacy.

The Federal judiciary is unlike the other branches of Government. Once confirmed, Federal judges serve for life. There is no court above the Supreme Court of the United States. The American people deserve a Supreme Court Justice who inspires confidence that he, or she, will not be beholden to the President but will be immune to pressures from the government or from partisan interests.

The stakes for the American people could not be higher. At this critical moment, Democratic Senators are performing our constitutional advice and consent responsibility with heightened vigilance. I urge all Senators—Republicans, Democrats and Independents—to join with us. The Supreme Court is the guarantor of the liberties of all Americans. The appointment of the next Supreme Court Justice must be made in the people's interest and in the Nation's interest, not to serve the special interests of a partisan faction.

I have voted for the vast majority of President Reagan's, President Bush's, and President Bush's judicial nominees. I recommended a Republican to President Clinton to fill Vermont's seat on the Second Circuit, Judge Fred Parker, and recommended another Republican to President Bush to fill that seat after Judger Parker's death, Judge Peter Hall. I voted for President Reagan's nomination of Justice Sandra Day O'Connor, for President Reagan's nomination of Justice Anthony Kennedy, for President Bush's nomination of Justice Souter, and for this President's recent nomination of Chief Justice Roberts. In fact, I have voted for eight of the nine current Justices of the Supreme Court.

I want all Americans to know that the Supreme Court will protect their rights and will respect the authority of Congress to act in their interest. I want a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill or Rights and human dignity are honored. In good conscience, based on the record, I cannot vote for this nomination. I urge all Senators to use this last night of debate to consult their consciences and their best judgment before casting their votes tomorrow. That vote will matter.

In my 30 years in the Senate, I have cast almost 12,000 votes here in the Senate. Few will be as important as the vote we cast tomorrow.

Mr. President, I now ask unanimous consent that the application to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PPO NON-CAREER APPOINTMENT FORM

From: Mark R. Levin.

To: Mark Sullivan. Associate Director, PPO.

Date Sent: 11/18/85.

Canadidate: Samuel A. Alito, Jr.,

Department: Department of Justice.

Job Title: Deputy Assistant Attorney General.

Grade: ES–I.

Supervisor: Charles J. Cooper.

Race: White.

Sex: Male.

Date of Birth: Apr. 1, 1950.

Home State: New Jersey.

Previous Government Service: Yes.

If yes, give departments, dates career or non-career positions held: Assistant to the Solicitor General, Dept. of Justice, 1981 to present; Assistant U.S. Attorney, N.J., 1977–1981; Law clerk to Judge Leonard I. Garth, U.S. Court of Appeals, Third Cir., 1976–1977,

A complete Form 171, political and personal resumes, complete job description, and letters of support must be included for White House clearance to begin.

1980 Domicile (State): New Jersey.

Please provide any information that you regard as pertinent to your philosophical commitment to the policies of this administration, or would show that you are qualified to effectively fill a position involved in the development, advocacy and vigorous implementation of those policies.

Have you ever served on a political committee or been identified in a public way with a particular political organization, candidate or issue?

(Please be specific and include contacts with telephone numbers.)

I am and always have been a conservative and an adherent to the same philosophical views that I believe are central to this Administration. It is obviously very difficult to summarize a set of political views in a sentence but, in capsule form, I believe very strongly in limited government, federalism, free enterprise, the supremacy of the elected branches of government, the need for a strong defense and effective law enforcement, and the legitimacy of a government role in protecting traditional values. In the field of law, I disagree strenuously with the usurpation by the judiciary decisionmaking authority that should be exercised by the branches of government responsible to the electorate. The Administration has already made major strides toward reversing this trend through its judicial appointments, litigation, and public debate, and it is my hope that even greater advances can be achieved during the second term, especially with Attorney Meese's leadership at the Department of Justice.

When I first became interested in government and politics during the 1960s, the greatest influences on my views were the writings of William F. Buckley, Jr., the National Review, and Barry Goldwater's 1964 campaign. In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment. I discovered the writings of Alexander Bickel advocating judicial restraint, and it was largely for this reason that I decided to go to Yale Law School.

After graduation from law school, completion of my ROTC military commitment, and a judicial clerkship, I joined the U.S. Attorney's office in New Jersey, principally because of my strong views regarding law enforcement.

Most recently, it has been an honor and source of personal satisfaction for me to serve in the office of the Solicitor General during President Reagan's administration and to help to advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed and that the Constitution does not protect a right to an abortion.

As a federal employee subject to the Hatch Act for nearly a decade, I have been unable to take a role in partisan politics. However, I am a life-long registered Republican and have made the sort of modest political contributions that a federal employee can afford to Republican candidates and conservative causes, including the National Republican Congressional Committee, the National Conservative Political Action Committee, Rep. Christopher Smith (4th Dist. N.J.), Rep. James Courter (12th Dist. N.J.), Governor Thomas Kean of N.J., and Jeff Bell's 1982 Senate primary campaign in N.J. I am a member of the Federalist Society for Law and Public Policy and a regular participant at its luncheon meetings and a member of the Concerned Alumni of Princeton University, a conservative alumni group. During the past year, I have submitted articles for publication in the National Review and the American Spectator.

Applicant Signature: Samuel A. Alito, Jr.

Date: Nov. 15, 1985

Associate Director Recommendation: Approved, Mark Sullivan.

Mr. DORGAN. We work on many important issues here in the Congress, but none more important than choosing a Justice to serve on the Supreme Court.

Providing a lifetime appointment to the U.S. Supreme Court is a very serious matter for both the President and the U.S. Senate. Our choice will impact

our country well beyond the term of office for the President and for most of the Senate.

Those nominations are also very important to the citizens of our country and my State of North Dakota, many of whom—on both sides—have contacted my office and whose counsel I have heard and valued.

This is the second nomination for the U.S. Supreme Court that has been sent to the Senate by President Bush in the span of a few short months.

During consideration of the nomination of Judge John Roberts to become Chief Justice of the Supreme Court, I studied his record carefully. I reviewed the hearing records of his appearance before the Senate Judiciary committee as well as his record as a Federal judge on the Circuit Court.

And in the end, I voted to confirm Judge Roberts. I concluded that he was very well qualified, and I also felt after meeting with him that he would not bring an ideological agenda to his work of interpreting the U.S. Constitution.

In short, I felt he would make a fine Chief Justice.

The Supreme Court nomination we are now considering is that of Judge Samuel Alito.

This has been a difficult decision for me.

Judge Alito has substantial credentials. His education, work history, and his 15 years of service on the Circuit Court are significant.

However, in evaluating Judge Alito's rulings, writings, and his responses during his nomination hearings, I have been troubled by several things.

First, he has a clear record over many years of a tendency to favor the big interests over the small interests. That is, when an individual is seeking justice in the courts by taking on the government or a large corporation, Judge Alito's rulings are often at odds with the rulings of his colleagues on the Court and tend to overwhelmingly favor the government or the big interests.

People who live in small States like North Dakota have, over many years, found it necessary to use the courts to take on the big economic interests. Whether it is taking on big corporations, the railroads, big financial interests, or the U.S. Government, as farmers have had to do in recent decades, I think it is important that a Supreme Court Justice be someone who will give the people a fair hearing.

Judge Alito's rulings on the circuit court have, I believe, tilted heavily on the side of the big interests.

One of the key questions for me about a new Justice for the Supreme Court is ''will this person interpret the Constitution in a manner that expands personal freedom and liberty, or will this person interpret it in a way that restricts personal freedom and liberty?''

I believe Judge Alito's record is one that leans in the direction of restricting the freedom and liberty of individual citizens.

I am also concerned by Judge Alito's view of what is referred to as the unitary executive. This is an issue about Presidential power in our form of government. The judicial branch of Government is designed to be a check and balance on the expansion of Presidential powers. I believe Judge Alito's answers in the Judiciary Committee to questions about the unitary executive tilt toward showing deference toward expanded and unchecked Presidential authority. His views on this issue concern me.

For all of these reasons, I have decided to cast my vote against the nomination of Judge Samuel Alito. I take no joy in opposing his nomination, but for the reasons I have mentioned above, I am not comfortable voting to confirm him for a lifetime appointment on our Nation's highest Court.

Over the years, I have supported about 97 percent of the nominees for the Federal court sent to us by President Bush. My record has been one of substantial support for the President's nominees.

But for me, a nomination to the Supreme Court carries much more weight and greater potential consequences for the country.

Judge Alito is replacing Justice Sandra Day O'Connor on the Court. Justice O'Connor has been a key swing vote on so many issues that have been decided by a 5-to-4 vote in recent years.

I believe that Judge Alito's nomination, if approved by the Senate, would tilt that Court in a direction that will restrict personal freedoms, strengthen the role of government and corporations in our lives, and allow the expansion of power of the Presidency.

For those reasons, I have decided to vote no on this nomination.

Mr. ROCKEFELLER. Mr. President, I rise today to share my thoughts and concerns about the President's nomination of Samuel Alito to be an Associate Justice on the U.S. Supreme Court.

It goes without saying that the decision whether to confirm a nominee for a lifetime position on the Supreme Court is among the Senate's most serious and solemn constitutional obligations.

My ultimate test for whether to support a nominee to the Supreme Court rests with two questions: will the nominee protect the best interests of West Virginians and will the nominee uphold the fundamental rights and freedoms of all Americans that are set out in the Constitution and in our laws. It is a high standard, as it must be for a lifetime appointment to the highest Court in the land.

In the last few weeks and months, through careful consideration, I have attempted to answer those two questions. I have concluded that Judge Alito's judicial record, his writings, and his statements portray a man who will not do enough to stand up against power when the rights of average Americans are on the line and who will not do enough to stand up against the President when the checks and balances in our Constitution are on the line.

I will not support a filibuster because I see it as an attempt to delay his certain confirmation. But I will register my grave concerns about Judge Alito's nomination to the Supreme Court by voting against confirmation when that final vote is before us.

My decision is the result of a long and deliberative process.

As my record plainly shows, I have never applied a partisan or ideological litmus test to nominees. George W. Bush was elected as a conservative President, and I have supported his conservative choices at every level. On the judiciary alone, I have voted to confirm 203 out of 212 judges nominated by President Bush. Just 4 months ago, I voted in support of Chief Justice John Roberts, a true conservative, because I concluded that he would consider fully the lives of average people, the lives of those in need and those whose voices often are not heard. I believed on balance that he would be his own man in the face of inevitable outside pressures.

In recent weeks and months, I have heard from hundreds of West Virginians through letters, telephone calls, and personal conversations. Many have expressed strong opposition to Judge Alito, and many have expressed strong support for him. I have weighed all of their views carefully.

I also have labored over Judge Alito's record—his early writings, his rulings, his speeches, and his Senate testimony—and I met personally with Judge Alito. I wanted to hear directly from him, in his own words, what kind of an Associate Justice he would be.

There is no question he is an intelligent man with a deep knowledge of our legal system. During our conversations, he was a gentleman in every sense of the word. But for me these important character traits are not enough to warrant elevation to the U.S. Supreme Court.

I have concluded that although Judge Alito is a well-qualified jurist, I cannot in good conscience support a nominee whose core beliefs and judicial record exhibit simply too much deference to power at the expense of the individual.

Particularly in the committee hearings, when pressed on issues such as individual rights and Presidential powers, Judge Alito's answers troubled me—they were limited and perfunctory. I was left with a strong sense of his ability to recite and analyze the law as it stands but with very little sense of his appreciation for the principles and the real people behind those laws.

Unfortunately, Judge Alito's record does not allay those concerns. As a government lawyer, a Federal prosecutor, and a 15-year Federal judge on the Third Circuit, with lifetime tenure, Judge Alito has repeatedly sided against people with few or no resources. The average person up against a big corporation, an employer, or even

the government itself, all too often comes out on the short end of the stick in front of Judge Alito.

I am particularly troubled by one case, RNS Services v. Secretary of Labor. In RNS Services, Judge Alito argued, in a lone dissent, against protecting workers in a Pennsylvania coal plant by not enforcing the jurisdiction of the Mine Safety and Health Administration, MSHA. Judge Alito claimed that the coal processing plant was closer to a factory than a mine, and therefore should be governed by the more lenient Occupational Safety and Health Administration, OSHA, standards. Fortunately for the miners, the majority of judges in the case did not agree with Judge Alito, and MSHA's standards prevailed.

Outside the courtroom, Judge Alito has at various times in his career suggested, directly and indirectly, that he supports a disproportionately powerful President and executive branch. As a mid career government lawyer, his writings showed a solicitous deference to the executive branch and a willingness to undercut the constitutional authority of Congress. As recently as 2000, Judge Alito forcefully argued in support of a controversial theory known as the ''unitary executive'' which would allow the President to act in contravention of the laws passed by Congress in carrying out his duties.

As vice chairman of the Senate Intelligence Committee, I have developed an even greater appreciation for the wisdom of our Nation's Founders in creating a system of checks and balances among the judicial, executive and legislative branches of Government. The interaction between the President and the Congress on matters of national security, classified and unclassified, is incredibly important to our safety and our future. Today there is a serious legal and constitutional debate going on in our country about whether the President, who already has enormous inherent powers as the leader of our country, has expanded his executive reach beyond the bounds of the law and the Constitution. The fact is the President does not write the laws, nor is he charged with interpreting them—the Constitution is unequivocally clear that lawmaking resides with the Congress and interpretation resides with the courts—yet this President, on many fronts, is attempting to do both.

This alarming trend has been exacerbated by the fact that we have a single party controlling both the White House and the Congress, resulting in minimal congressional oversight of an overreaching executive branch.

The Supreme Court, in the coming months and years, will be forced to rule on any cases related to expansion of Executive power. This nominee will play a pivotal role in settling the legal questions of today and charting a course for the legal questions of our children's and grandchildren's generations.

These are core questions: What is the scope of presidential power under the Constitution? What is the appropriate balance between the President and the Congress? When must the constitutionally protected rights of average Americans—workers' rights, families' rights, and individuals' rights—prevail?

At the end of the day, I am left with the fear that Judge Alito brings to the Court a longstanding bias in favor of an all-powerful presidency and against West Virginians' basic needs and interests.

Mr. LEVIN. Mr. President, while I had expected that the Senate would move directly to an up-or-down vote on Judge Alito's nomination to the Supreme Court without a vote on cloture, because I strongly oppose this nomination, as I explained in my remarks last week, and because the filibuster has been a time-honored and accepted part of the checks and balances on the President's appointment powers, I will vote against cloture on this nomination.

Mr. GREGG. Mr. President, I rise today to speak on the nomination of Judge Samuel A. Alito, Jr., to become an Associate Justice of the Supreme Court. After following the confirmation process and reviewing Judge Alito's qualifications, I am pleased to support this nomination and congratulate President Bush on another outstanding pick for our Nation's highest Court. Although there are no guarantees about how any judicial nominee will carry out his or her responsibilities once confirmed, I believe that Judge Alito will serve our country well as Justice Sandra Day O'Connor has done for almost a quarter of a century on the Supreme Court.

To explain why I support the nomination of Judge Alito, let me first begin my remarks by referring to article II of the U.S. Constitution—in particular, section 2, which states that it is up to the President to appoint individuals to our highest Court. As he pledged to the voters who elected him, President Bush has exercised his appointment powers to pick someone who firmly believes in the rule of law, the importance of protecting the rights of all Americans, and the Founding Fathers' wisdom of leaving policy decisions to the elected branches of Government. The President has followed through on his promise to the American people by choosing Judge Alito.

With that said, Judge Alito is not simply the fulfillment of a campaign promise—he is also one of the sharpest legal minds in the Federal appellate ranks and a dedicated public servant. A former editor of the Yale Law Journal and Army reservist, Judge Alito has served as a law clerk for Judge Leonard Garth of the Third Circuit, an assistant U.S. attorney for New Jersey, an Assistant to the Solicitor General, Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel, and the U.S. attorney for New Jersey. After his first 15 years of public service, he then went on to serve as a judge on the Third Circuit, for which he was unanimously confirmed by the Senate in 1990. In total, Judge Alito has served our Nation for 30 years, using his legal experience and talents for public good rather than for personal profit. We should all applaud and support such a record of public service, especially when you consider the fact that Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

Unfortunately, however, there are a number of my colleagues from across the aisle who somehow believe that this record of public service is something to deride and distort. Forget the fact that nearly everyone who has worked with Judge Alito or has taken an impartial review of this man's record and credentials, such as the American Bar Association, supports this nomination wholeheartedly. Forget the fact that Judge Alito has garnered the near unanimous support of his colleagues on the Third Circuit and lawmakers from both parties—including Governor Ed Rendell of Pennsylvania—who know him best. Forget the fact that Judge Alito has ruled in favor of minorities who have alleged racial discrimination or were convicted of crimes. Forget that Judge Alito is known by those who have worked with him as a good and decent man who does not put ideology over public responsibility. Some of my colleagues do not want to consider any of these facts, or they somehow distort all of them as they try to smear the President's nominee. And why? Well, because Judge Alito is simply that; he is President Bush's nominee.

As someone who supported both of President Clinton's nominations to the Supreme Court, I find this type of partisanship appalling. Instead of accepting the obvious fact that Judge Alito is more than well qualified to serve on the Supreme Court, some of my colleagues want to cherry-pick and distort a few opinions out of the hundreds that he has written, hype up his alleged relationship with a university organization, or huff and puff about the Vanguard recusal matter even though the American Bar Association and most well regarded legal ethics experts have found nothing unethical. As opposed to qualifications, some of my colleagues across the aisle want to focus solely on these petty matters that are borne simply out of personal vendetta or the echo chamber of liberal blogs. They now want the Senate and the American people to forget everything else and base this important vote on a few dubious claims.

None of this is healthy for the Senate or for our Nation. It does not take a genius to realize that most Americans are tired of this petty partisanship, and the personal attacks on Judge Alito and the distortion of his record will only further discourage, not encourage, future nominees who have lengthy records of public service and judicial experience. This is troubling, and I hope that the previous few months are

not more evidence of a trend towards partisanship at all costs. Whether some may like it or not, President Bush was elected by the American people. His nominees therefore deserve fair and dignified consideration by the Senate, even by those who opposed the President's election or his views on certain issues.

Perhaps these past few months should not have been a surprise to people like me who believe that the Senate should not let politics or ideology stand in the way of qualified nominees. After all, maybe all of this was foreseen by the Founding Fathers when they established the nomination process in article II, section 2 of the Constitution and gave the Senate only a limited advice and consent role. As Edmund Randolph noted, ''Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications.'' Looking at how some of my colleagues have approached the nomination of Judge Alito, I believe that Mr. Randolph, sadly, may have been right when he said this more than 200 years ago.

Fortunately, there are a greater number of colleagues here in the Senate who do view the issue of judicial nominations as being about qualifications, not politics. They include the majority leader and the chairman of the Judiciary Committee, who have both done a commendable job of moving this nomination forward and giving us the opportunity to have an up-or-down vote. I congratulate them on their efforts and look forward to casting my vote in support of Judge Alito. He certainly deserves it, as well as the support of the rest of the Senate.

Ms. COLLINS. Mr. President, I rise today to speak in favor of the nomination of Samuel Alito to serve as Associate Justice of the Supreme Court.

The Supreme Court is entrusted with an enormous power—the power to interpret the Constitution, to say what the law is, to guard one branch against the encroachments of another, and to defend our most sacred rights and liberties.

The decision of whether to confirm a nominee to the Supreme Court is a solemn responsibility of the Senate and one that I approach with the utmost care. It is a duty that we must perform despite the fact that nominees are constrained in the information they can provide us.

Some interest groups, and even some of my colleagues, have called on nominees to promise to vote a certain way; they demand allegiance to a particular view of the law or a guarantee in the outcome of cases involving high-profile issues. These efforts are misguided.

To avoid prejudging and to ensure impartiality, a nominee should not discuss issues in areas of the law that are ''live''—where cases are likely to come before the Court. Parties before the Court have a right to expect that the Justices will approach their case with a willingness to fully and fairly consider both sides.

The cases that come before the Supreme Court each year present legal issues of tremendous complexity and import, and Justices should not be asked to speculate as to how they would vote, or make promises in order to win confirmation. Justice Ginsberg stated during her hearing that a nominee may provide ''no hints, no forecasts, no previews'' on issues likely to come before the Court. As Justice Ginsberg's statement underscores, the Justices should reach a conclusion only after extensive briefing, argument, research, and discussion with their colleagues on the Court.

We must also recognize that there are limits to our ability to anticipate the issues that will face the Court in the future. Twenty years ago, few would have expected that the Court would hear cases related to a Presidential election challenge, would try to make sense of copyright laws in an electronic age, or would face constitutional issues related to the war on terrorism.

While we cannot know with certainty how a nominee will rule on the future cases that will come before him or her, we are not without information on which to base our judgement. We must engage in a rigorous assessment of the nominee's legal qualifications, integrity, and judicial temperament, as well as the principles that will guide the nominee's decisionmaking. In fact, in Judge Alito's case, I note that we have significantly more information on which to base our judgement than with other nominees, given his long tenure as a judge on the Third Circuit Court of Appeals.

The excellence of Judge Alito's legal qualifications is beyond question. Even his fiercest critics acknowledge that he is an extraordinary jurist with an impressive knowledge of the law, a conclusion also reached by the American Bar Association, ABA.

The ABA Standing Committee on the Judiciary conducted an exhaustive review of his qualifications. During this process, the Committee contacted 2,000 individuals throughout the Nation, conducted more than 300 interviews with Federal judges, State judges, colleagues, cocounsel, and opposing counsel, and formed reading groups to review his published opinions, unpublished opinions, and other materials. Based on its review, the committee found Judge Alito's integrity, his professional competence, and his judicial temperament to be of the highest standard, and decided unanimously to rate him ''well qualified''—the highest possible rating.

When asked at his hearing what type of Justice he would be, Judge Alito directed Senators to his record as a judge on the Third Circuit. I agree this is the appropriate focus.

During his 15 years of service on the Third Circuit, Judge Alito has voted in more than 4,800 cases and has written more than 350 opinions. His record on the bench is one of steady, cautious, and disciplined decisionmaking. He is careful to limit the reach of his decisions to the particular issues and facts before him, and he avoids inflammatory or politically charged rhetoric. And despite this extensive record, there is no evidence that his decisions are results-oriented. For example, in the area of reproductive rights, I note that he has reached decisions favoring competing sides of the political debate.

After reviewing Judge Alito's dissenting opinions, Cass Sunstein, a well-known liberal law professor from the University of Chicago, reached the following conclusion: ''None of Alito's opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. . . . Alito does not place political ideology in the forefront.''

During his hearing, the committee heard the testimony of seven judges from the U.S. Court of Appeals for the Third Circuit, the court on which Judge Alito currently serves. The panel was comprised of current and retired judges, appointed by both Democratic and Republican Presidents, and holding views ranging across the political spectrum.

Who better to know how Judge Alito thinks, reasons, and approaches the law, than those with whom he worked so closely over the past 15 years? And it is significant that these colleagues were unanimous in their praise of Judge Alito—in his legal skills, his integrity, his evenhandedness, and his dedication to precedent and the rule of law.

As Judge Becker commented, ''The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants.''

Judge Aldisert, who was appointed by President Johnson, had this to say: ''The great Cardozo taught us long ago the judge, even when he is free, is not wholly free. He is not free to innovate at pleasure. This means that the crucial values of predictability, reliance and fundamental fairness must be honored. . . . And as his judicial record makes plain, Judge Alito has taken this teaching to heart.''

Judge Lewis, a committed human rights and civil rights activist who described himself as ''openly and unapologetic pro-choice,'' said: ''I cannot recall one instance during conference or during any other experience that I had with Judge Alito . . . when he exhibited anything remotely resembling an ideological bent. . . . If I believed that Sam Alito might be hostile to civil rights as a member of the

United States Supreme Court, I guarantee you that I would not be sitting here today.''

Judge Alito's colleagues provided compelling testimony of his deep and abiding commitment to the rule of law, the limited role of a judge, and the obligation to decide the case based on the facts and the record before him. They also testified that Judge Alito's decisions have been constrained by established legal rules and specifically by a respect for the rules of precedent. The weight of their testimony is substantial—they know far more about Judge Alito's judicial philosophy than we could hope to learn in a few days of public hearings.

A nominee's judicial philosophy matters to me. When I met with Judge Alito, I specifically asked him about his views on the importance of precedent and stare decisis—the principle that courts should adhere to the law set forth in previously decided cases.

During both our meeting and his hearing, Judge Alito evidenced a strong commitment to the principle of stare decisis. Judge Alito acknowledged the importance of this principle to reliance, stability, and settled expectations in the law.

At his hearing, Judge Alito, referring to the landmark Roe v. Wade decision, testified as follows: ''[I]t is a precedent that is protected, entitled to respect under the doctrine of stare decisis. . . .''

Similarly, Chief Justice Roberts, who was confirmed with a strong bipartisan support, made a nearly identical statement at his hearing. He said that Roe is ''a precedent of the court, entitled to respect under the principles of stare decisis.''

After a careful comparison of these statements and others, I find that on substance, there is little that distinguishes the two nominees' statements on this issue. Both nominees clearly acknowledged the importance of precedent, the value of stare decisis, and the factors involved in analyzing whether a prior holding should be revisited. Both agreed that the Constitution protects the right to privacy, and that the analysis of future cases involving reproductive rights begins not with Roe but with the Casey decision, which reaffirmed Roe's central holding. And both testified that when a case has been reaffirmed multiple times, as Roe has, this increases its precedential value.

Despite the strong testimony of both Chief Justice Roberts and Judge Alito, the reality is that no one can know for certain how a Justice will rule in the future. History has shown us that many predictions about how other Justices would decide cases have proven wrong.

At her hearing in 1981, Justice O'Connor vigorously defended her belief that abortion was wrong and stated that she found it ''offensive'' and ''repugnant.'' Justice Souter once filed a brief as a State attorney general opposing the use of public funds to finance what was referred to in the brief as the ''killing of unborn children.'' Justice Kennedy once denounced the Roe decision as the ''Dred Scott of our time.''

Yet, in 1992, all three of these Justices joined together to write the joint opinion in Casey reaffirming Roe based on the ''precedential force'' of its central holding.

Based on my review of his past decisions, I doubt that I will agree with every decision Judge Alito reaches on the Court, just as I do not agree with all of his previous decisions. I anticipate, however, that his legal analysis will be sound, and that his decisionmaking will be limited by the principle of stare decisis and the particulars of the case before him.

Judge Alito has demonstrated his fitness for this appointment with his clear dedication to the rule of law. After an exhaustive review process, the ABA has given him its highest possible rating. His colleagues on the Third Circuit, both Republican and Democrat appointees alike, have been unqualified in their praise of his nomination.

Based on the record before me, I believe that Judge Alito will be a Justice who will exercise his judicial duties guided not by personal views, but based on what the facts, the law, and the Constitution command.

For these reasons, I will vote to confirm Judge Alito. I hope and expect that he will prove his critics wrong and that his record on the Supreme Court will show the same deference to precedent, respect for the limited role of a judge, and freedom from ideologically driven decisionmaking that he has demonstrated during his tenure on the Third Circuit.

Mr. KYL. Mr. President, I explained last Wednesday that I would support the nomination of Judge Alito. Since then, I have been somewhat frustrated at how this Senate debate has progressed. Time and time again, some Senators have mischaracterized the cases and record of Judge Alito. I would like to take a few minutes and walk through just a few of those misstatements.

First, let me address the case of Sheridan v. DuPont.

On January 26, the junior Senator from Colorado indicated that Judge Alito was unlikely to support principles of diversity because he ruled against a female plaintiff in a gender discrimination case. The Senator said, ''In Sheridan, Judge Alito registered the lone dissent among thirteen judges voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.'' The Senator's summary of the case requires additional elaboration, though.

According to the record of that case, the plaintiff, Barbara Sheridan, was employed as head captain of the Green Room restaurant in the Hotel DuPont. Initially, she received good performance reviews, but DuPont claimed that her performance began to deteriorate in 1991. At that point, her manager met with her to ask her to stop using the restaurant bar for smoking and grooming. Apparently Sheridan was frequently late to work, and other employees had complained about food and drinks she gave away. In February 1991, the hotel decided to reassign Sheridan to a nonsupervisory position that did not involve the handling of cash. She would not suffer any reduction in pay because of this job transfer. Rather than accept reassignment, Sheridan resigned in April 1992 and sued for gender discrimination.

When the case came before him on appeal, Judge Alito joined a unanimous three-judge panel that ruled for Ms. Sheridan. He held that her case should go to trial because it was plausible that a jury could agree with her. Judge Alito explained, ''a rational trier of fact could have found that duPont's proffered reasons for the constructive termination were pretextual.''

Later, however, the case was heard by the full Third Circuit. At that time, Judge Alito expressed doubt about the applicable Third Circuit precedent. Hesitant about the court's broad rule that affected all cases with varying factual situations, he explained that when the employee makes out a case like this, she should usually, but not always, be accorded a trial. He reached this conclusion after parsing the Supreme Court's 1993 decision in St. Mary's Honor Center v. Hicks. And most importantly for present purposes, the Supreme Court later agreed with Judge Alito's view in a unanimous opinion authored by Justice O'Connor. That case, Reeves v. Sanderson Plumbing Products, can be found at 533 U.S. 133, and was decided by the Supreme Court in 2000.

The job of an appellate court judge is to faithfully interpret the Constitution and the Supreme Court's interpretations of statutes. The history of this case demonstrates that Judge Alito got it right when he examined pleading standards in title VII cases.

Let's move on to another case, the 1996 case of U.S. v. Rybar, in which Judge Alito dissented.

On January 25, the Senior Senator from Rhode Island said that Judge Alito ''advocated striking down Congress's ban on the transfer and possession of machine guns.'' He further said that Judge Alito had argued that he was ''not convinced by Congress' findings on the impact of machine guns on interstate commerce. He substituted his own policy preferences in a way that the Third Circuit majority found was, in their words, counter to the difference that the owes to its two coordinate branches of government.''

I discussed this case with Judge Alito during his confirmation hearings. The description we have just heard does not tell the whole story.

Judge Alito's dissent in that case had nothing to do with being ''convinced'' by Congress's findings. Rather, Judge

Alito based his dissent, in part, on the fact that Congress made no explicit findings regarding the link between the intrastate activity regulated by these laws, the mere possession of a machine gun, and interstate commerce. Note that this case was about possession, not transfer or commercial activity.

Second, the dissent had nothing to do with Judge Alito's own policy preferences regarding the possession of machine guns. Rather, it was a careful application of the then-recent decision in United States v. Lopez, which reminded courts to take seriously the limits of Congress's powers under the commerce clause. In Lopez, the Supreme Court had held that Congress's power to regulate commerce among the several States did not include the power to regulate possession of a gun near a school where the gun never crossed State lines. It was for the Third Circuit to decide whether Congress's power to regulate interstate commerce included the power to regulate possession of a machine gun where the machine gun never crossed State lines. In Judge Alito's view, the Supreme Court's decision ''require[d] [the court] to invalidate the statutory provision at issue.'' He relied on and cited Lopez at least 22 times in his 9-page dissenting opinion.

Again, this is the job of an appeals court judge: to interpret Supreme Court precedent and apply it to new cases.

I should also point out that Judge Alito's dissenting opinion provided a virtual roadmap for how Congress could regulate the possession of guns in a way consistent with the Constitution and Supreme Court case law. This is hardly the behavior of someone bent on imposing a ''policy preference'' against regulating machine guns. According to Judge Alito, all Congress had to do was make findings as to the link between the possession of firearms and interstate commerce or add a requirement that the government prove that the firearm moved across State lines.

Let me add one last word on the Rybar case. It is often said that Judge Alito always sides with the government. Well, this case was called ''United States versus Rybar,'' and Judge Alito was on the side of Mr. Rybar. Of course, he did not think of himself being on anyone's side. He was just doing as he believed the Constitution and Supreme Court required. And he would have felt the same way if the law required the opposite conclusion.

Let us now move on to another case, that of Riley v. Taylor.

Speaking at the executive business meeting for the nomination of Judge Alito, the senior Senator from Illinois left a misimpression of the facts of this case, so I would like to clear up any confusion.

In that case, Judge Alito found there was insufficient evidence to support a criminal defendant's claim that the prosecutor had violated his constitutional rights by striking three minorities from the jury pool. The Senator said that the prosecutor had ''in three previous murder cases, used every challenge they had to make certain that only white jurors would stand in judgment of black defendants.'' That is not accurate. While it is true that the criminal defendant relied heavily on the anemic evidence that in three previous trials no African Americans ended up on the jury, it is also the case that the prosecutor had struck both Blacks and Whites from those juries. Indeed, Judge Alito pointed out in his decision that, of the excluded jurors in the previous trials, only 24 percent were African Americans. He suggested that this might not even be disproportionately high in a county where the most recent census indicated that 18 percent of the population was Black.

Most importantly, Judge Alito's opinion rejected the selective use of statistics based upon the sample size of three trials. In so ruling, Judge Alito was in agreement with multiple State and Federal judges who had heard the case before him. On the full Third Circuit, four other judges, half of them Democratic appointees, joined in his opinion on this point. Not a single judge thought the statistical argument settled the case.

As a postscript, when Riley was given a new trial by the Third Circuit, he was again convicted of all charges. When he again appealed, the Delaware Supreme Court found that his petition was ''wholly without merit.''

Let me turn to another case, one also discussed by the senior Senator from Illinois, but during his January 25 floor speech, that of Pirolli v. World Flavors.

The Senator from Illinois stated: ''Another case involved an individual who was the subject of harassment in the work place. This person had been assaulted by fellow employees. He was a mentally retarded individual.'' The Senator continued, ''His case was dismissed by a trial court, and it came before Judge Alito to decide whether or not to give him a chance to take his case to a jury. And Judge Alito said no. The man should not have a day in court.''

Several corrections are needed here.

First, the plaintiff in this case did have his day in court; he just did not reach a jury. During the course of the proceedings, the plaintiff presented his argument to not one, but four judges—one district court judge and three appellate court judges. The rules of the Third Circuit require that a plaintiff present his case in a minimally adequate fashion in order to be considered. The plaintiff must, at a minimum, state what happened to him and provide the basis for his claim. But the plaintiff in this case, a man who had a lawyer, never did that. The Third Circuit judges in this case were not provided with enough facts to make an adequate and informed decision. Judge Alito emphasized, ''I would overlook many technical violations of the Federal Rules of Appellate Procedure and our local rules, but I do not think it is too much to insist that Pirolli's brief at least state the ground on which reversal is sought.''

Second, with regard to the plaintiff's sexual harassment claim, Judge Alito refused to accept the arguably demeaning stereotype which the plaintiff's lawyer advanced, which was ''that retarded persons are any more (or less) sensitive to harassment than anyone else.'' Judge Alito required evidence on which to base his ruling and refused to rely on the proposed stereotype.

Let's move on to another case, that of Doe v. Groody.

This case was mentioned by several Senators but in particular by the Junior Senator from Massachusetts on January 25. The Senator said that Judge Alito did not support individual rights because he dissented in Doe v. Groody. He said, ''Judge Alito's hostility to individual rights isn't limited to civil rights. He consistently excuses government intrusions into personal privacy, regardless of how egregious or excessive they are. In Doe v. Groody,'' the Senator from Massachusetts argued, ''dissented from an opinion written by then-Judge Michael Chertoff because he believed that the strip search of a ten year-old was reasonable.''

First, let's get the legal question straight. The issue in Doe v. Groody was whether police officers should be able to be personally sued for money damages when they misunderstand the scope of the search warrant they were given.

Second, let's look at what happened during the event in question. On March 6, 1998, as a result of a long-term investigation of a John Doe for suspected narcotics dealing, officers of the Schuylkill County Drug Task Force sought a search warrant for Doe and his residence. The typed affidavit in support of the warrant stated, among other things, that a reliable confidential informant had purchased methamphetamine on several occasions from John Doe at his residence. The affidavit sought permission to ''search all occupants of the residence and their belongings.''

However, the printed sheet entitled ''Search Warrant and Affidavit'' contained an entry naming only John Doe under the question, ''specific description of premises and/or persons to be searched.'' When the officers entered the house to commence the search, they decided to search Jane Doe and her daughter, Mary, age 10, for contraband. A female officer removed both Jane and Mary Doe to an upstairs bathroom where she searched them for drugs. No contraband was found. Once the search was completed, both mother and daughter returned to the ground floor to await the end of the search.

As a matter of policy, the sad reality is that drug dealers often hide weapons and drugs on children in the home. Judge Alito acknowledged in his opinion that he found the fact that the

search occurred to be unfortunate. Accordingly, police officers sometimes request warrants that allow them to search all persons found during a drug bust.

The Does sued the police officers personally for money damages. The issue was how to read the warrant in light of the affidavit. And the legal question question was whether a reasonable officer could have believed that the search warrant allowed the officers to search everyone in the house. Two judges on the panel said no, while Judge Alito said yes.

Why did Judge Alito believe that the police officers should not be liable personally? He concluded that a reasonable police officer could think that the warrant should be read in conjunction with the attached affidavit. Judge Alito reasoned that a ''commonsense and realistic'' reading of the warrant authorized a search of all occupants of the premises. Judge Alito found that the officers in this case ''did not exhibit incompetence or a willingness to flout the law. Instead, they reasonably concluded that the magistrate had authorized a search of all occupants of the premises.''

So, on the law, Judge Alito did not, as he has been accused repeatedly over the past few days, authorize the strip-search of a 10-year-old girl. He just tried to sort out a practical, on-the-ground problem for law enforcement. It is sad but predictable that this case, with its inflammatory facts, would come up repeatedly, but repetition is not going to change the record of what happened.

Mr. President, let's move on.

I want to address a claim by the junior Senator from Illinois in a January 26 speech that, whenever Judge Alito has discretion, he will rule against an employee or a criminal defendant. To quote, the Senator said, ''If there's a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there's a claim between prosecutors and defendants if the Supreme Court has not provided a clear role of decision, then he'll rule in favor of the state.''

This just is not the case. There are 4,800 cases that could be reviewed to demonstrate the inaccuracy of that claim, but let's just look at a few.

In Zubi v. AT&T, an employee claimed that AT&T had fired him based on his race, but the record was far from clear. Judge Alito clearly had room to rule against the employee. After all, the other two judges deciding the case on appeal did so and threw out the employee's claim. They held that the employee had waited too long to bring his claim. In contrast, Judge Alito issued a lone dissent arguing that the employee was entitled to bring his discrimination claim. Later, the Supreme Court unanimously vindicated Judge Alito's view.

As another example to counter the Senator from Illinois's claim, consider the case of United States v. Igbonwa. There, a criminal defendant argued that the prosecutor had failed to honor his plea agreement. The majority of the court voted against the defendant and in favor of the prosecutor. Clearly, Judge Alito had legal grounds to do the same. Instead, Judge Alito issued a lone dissent arguing that the prosecutor was required to fulfill this promise to the defendant.

In yet another example, in Crews v. Horn, Judge Alito ruled that a prisoner was entitled to more time to bring his habeas petition. Again, the Supreme Court and Third Circuit had never decided the question, and the statute was unclear. Judge Alito could have ruled either way, yet he ruled in favor of the prisoner's claim.

This is a good time to remind the Senate what Third Circuit Judge Edward Becker, who served with Judge Alito for 15 years, had to say on this point. He testified, ''The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants.'' As Judge Becker summarized Judge Alito's career, ''His credo has always been fairness.''

Mr. President, I want to turn to some of the mischaracterizations of Judge Alito's past record as a government official.

In her January 25 speech, the junior Senator from New York said that Judge Alito had written that ''in his estimation it is not the role of the federal government to protect the health, safety, and welfare of the American people.''

As best I can tell, the Senator is referring to a 1986 document addressing the Truth in Mileage Act, a bill to require States to change their automobile registration forms to include the mileage of the car every time it was sold. That document did not, as the Senator said, offer Alito's ''estimation'' on anything. Judge Alito was drafting a veto message for President Reagan. Accordingly, he drafted that message in President Reagan's voice and restated President Reagan's policy on federalism. The first-person pronoun in that message is President Reagan, not Alito.

It is also worth nothing that Judge Alito did not challenge Congress's powers. His cover memo acknowledged that ''Congress may have the authority to pass such legislation.'' He did point out that the legislation was ''in large part unnecessary since only five states and the District of Columbia do not already have'' title forms that meet this requirement.

Let's move to another statement from the Senator from New York. She stated that Judge Alito's ''time on the bench shows an unapologetic effort to undermine the right to privacy and a woman's right to choose.''

In fact, Judge Alito's record confirms that he is not an ideologue on a crusade to curtail Roe v. Wade. In his 15 years on the bench, he has confronted seven restrictions on abortion, and he struck down all but one. Judge Alito has upheld a woman's right to choose even when he had the discretion to limit abortion rights.

For example, in the 1995 case of Elizabeth Blackwell Health Center for Women v. Knoll, Judge Alito struck down two abortion restrictions by the State of Pennsylvania. The first provided that a woman who became pregnant due to rape or incest could not obtain Medicaid funding for her abortion unless she reported the crime to the police. The second provided that if a woman needed an abortion to save her life, she had to obtain a second opinion from a doctor who had no financial interest in the abortion. The question was whether these laws conflicted with a Federal regulation issued by the Secretary of Health and Human Services. There was no binding Supreme Court precedent on point, and Judge Alito easily could have upheld the abortion restrictions if he had such a preset agenda. But Judge Alito voted to strike down both laws in favor of a woman's right to choose. This is not the behavior of someone bent on chipping away at Roe v. Wade. This is the behavior of a jurist who understands the importance of precedent.

The junior Senator from New Jersey came to the floor earlier today and criticized the work Judge Alito had done on behalf of the Reagan Justice Department on abortion cases. He suggested that those efforts showed a bias against Roe v. Wade that would matter in the future. But the record shows just the opposite, as discussed above. How else to explain the Knoll case? Moreover, the Senator said that Judge Alito would not describe Roe v. Wade as, quote, ''settled law.'' Judge Alito addressed this question repeatedly during the hearing. A judge cannot call an area of law ''settled'' when it is likely that cases dealing with that area will come before him. This demand to say that Roe is settled is little more than a desire to prejudge all those cases, including cases pending before the Supreme Court today. Judge Alito simply cannot do that without violating his judicial ethics and depriving those litigants of their fair day in court.

I will move on.

Earlier today, the junior Senator from Michigan said that Judge Alito had ''been criticized by his colleagues for trying to legislate from the bench in order to reach the result that he desires.'' I am not aware of a single example of any member of the Third Circuit, or of any other court in the Nation, claiming that Judge Alito had any tendency toward quote, ''legislating from the bench.''

In fact, just the opposite is true. It is especially surprising to hear such a claim given the testimony of Judge Alito's colleagues on the Third Circuit.

Would seven current and former Third Circuit judges testify for Judge Alito if they believed he was a judicial activist or otherwise unqualified for the bench? Those listening now or reading the CONGRESSIONAL RECORD in future years should go to the Judiciary Committee records on the Internet and read what those judges had to say when they testified on January 12. When I spoke last week, I entered in the RECORD a series of excerpts from that testimony that the Senate Republican Policy Committee, which I chair, had compiled. The complete testimony is worth reviewing, too. Again, I am not aware of a single time that any judge has accused Judge Alito of legislating from the bench.

As one last point, I must address this unitary executive issue. The senior Senator from New Jersey and others have said that Judge Alito somehow believes in making the executive more powerful than the legislative and judicial branches. One wonders how many times this misstatement has to be corrected. Judge Alito made clear during his testimony that his past comments regarding the unitary executive theory only—only, Mr. President—dealt with who has the power to control executive agencies. As he said repeatedly, insofar as this theory deals with the scope of Presidential power, he does not—repeat, does not—subscribe to it. What else can he say? He has made this extremely clear. He has said it repeatedly.

Mr. President, there have been other misstatements and mischaracterizations of Judge Alito's record. I can only respond to so many. I will simply encourage future students of this debate to look at the cases in question, and to carefully review the Committee record, before reaching conclusions based on floor debate.

I look forward to Samuel Alito serving on the Supreme Court for many years to come.

The PRESIDING OFFICER. Under the previous order, the majority leader or his designee will be recognized for the final 15 minutes prior to the vote on the motion to invoke cloture.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I urge my colleagues to invoke cloture on the nomination of Judge Alito to the Supreme Court and to support him on the final vote.

As the chairman of the Judiciary Committee, I sat through every minute of the proceedings, reviewed in advance some 250 cases of Judge Alito's, his work in the Justice Department, his work as U.S. Attorney, as Assistant U.S. Attorney, his academic record, and I found him to be eminently well qualified.

The objections which have been raised to the nomination turn on those who think he should have been more specific on answering certain questions. But to have been more specific, he would have had to in effect state how he would rule on cases to come before the Court, and that is going too far. He went about as far as he could go.

With the critical question of women's right to choose, his testimony was virtually identical to Chief Justice Roberts, and he affirmed the basic principles of stare decisis, a Latin phrase which means ''let the decision stand.''

He is not an originalist. He characterized the Constitution as a living document, as Cardozo did, reflecting the values of our country, the importance of the reliance on precedent, and articulated those views. He also indicated that he had an open mind on the issue of a woman's right to choose, notwithstanding what he had done in an advocacy role for the Department of Justice, notwithstanding any views he had expressed at an earlier date.

When it came to the critical question of Executive power, as to how he would handle cases, he subscribed to Justice Jackson's concurrence in the steel seizure cases, which is the accepted model. And here again, he went about as far as he could go in discussing the considerations and the factors which would guide his decisions.

When it came to Executive power, again he discussed the considerations which would guide him on his decisions but necessarily stopped short of how he would decide a specific case.

He disagreed with the Supreme Court of the United States, which has declared acts of Congress unconstitutional because of our method of reasoning, saying that our method of reasoning somehow was defective compared to the Court's method of reasoning. Judge Alito rejected that.

Perhaps most importantly in evaluating the prospects as to how Judge Alito will rule, we have to bear in mind that history shows the rule to be that there isn't a rule. Justice Sandra Day O'Connor, Justice Anthony Kennedy, Justice David Souter before coming to Court all expressed their sharp disagreement with abortion rights; once they got to the Court they have upheld a woman's right to choose. Then there is the classic case of President Truman's nominees on the big Youngstown case on steel seizure, voting contrary to what the President, their nominator, had expected.

We heard enormously powerful testimony coming from seven circuit judges, some past, some senior, and some currently active who have worked with Judge Alito. There were precedents for other judges coming forward to testify on behalf of a nominee—but not quite in this number, not quite in this magnitude. The seven judges were uniform in their assessment that Judge Alito has no agenda and has an open mind. These are jurists who know his work well, jurists who go with him after oral arguments into a closed room—no clerks, no secretaries, no recording—they see how he thinks and how he considers cases.

I think two judges were especially significant. The first was Judge Edward R. Becker, the winner of the Devitt Award as the outstanding Federal jurist a couple of years ago. Judge Becker has sat with Judge Alito on more than 1,000 cases. He is well known as a centrist and is a highly respected judge. He testified that Judge Alito and he had disagreed on a very small number of cases, about 25. The second was Judge Timothy Lewis, an African American who identifies himself as being very strongly pro-choice, very strong for civil rights. He was seated on the left-hand side of the panel—he made a reference to that reflecting his position on the philosophical spectrum—and testified very strongly on Judge Alito's behalf, saying that if he did not have every confidence in Judge Alito he would not have appeared as a witness in the proceeding.

The prepared statement which I filed in the record last week details a great many cases where Judge Alito has decided in favor of the so-called little guy.

In the context of the hundreds of decisions that Judge Alito has written and the thousands of cases where he has sat, you could pick out a few and put him with any position on the philosophical spectrum of the court.

Candidly, it is a heavy responsibility to cast a vote on a Supreme Court nominee, especially one who is taking the place of Justice O'Connor, a swing vote. But when we look at the traditional standard as to intellect, this man is an A plus. When we look at the traditional standard of character, again he is an A plus. When you look at the standard of experience and public service, he is an A plus. When you look at his analytical style as a jurist, again he is an A plus.

Some have objected to nominees because, as some have put it, there is no guarantee. Guarantees are for used cars and washing machines, not for Supreme Court nominees.

I believe Judge Alito is well qualified to receive an affirmative vote by the Senate and be confirmed as an Associate Justice of the Supreme Court.

I note the distinguished majority leader on the floor. The time left before the cloture vote—almost a full minute—I yield to Senator FRIST.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I will be using some leader time. For my colleagues, the vote will be in about 10 minutes or so.

In a few moments the Senate will decide whether to invoke cloture to close debate on the nomination of Sam Alito to be the 110th Associate Justice of the Supreme Court.

Before we vote, I want to take a minute to reflect just a bit on the progress that we have made in this overall judicial confirmation process over the last 12 months.

In the Senate, I really wear three hats. One is the Senator from the great State of Tennessee; second, the Republican leader; and third, majority leader. Wearing the third hat as majority leader, I have become a steward of our institution, steward in the sense of its rules and its precedents, its practices and the customs of this Senate.

My job is to bring Senators together, both sides of the aisle, to govern. That is why we are here, to govern with meaningful solutions to people's real problems, problems today, problems in the future, to identify what those problems are and then to resolve them and to secure America's future by honoring its past and by building on a record of accomplishment every day as we move forward.

Three years ago, when I assumed this position as majority leader, there was probably no single greater challenge or obstacle than the judicial confirmation process. In a word, it was broken. The minority party had decided to put partisanship first in the judicial confirmation process by, at that time, orchestrating regular, almost routine filibusters to block what we all know were highly qualified nominees from getting fair up-or-down votes. This partisan obstructionism began in 2001, it continued into 2002, in 2003, and then 2004.

If we look back to the 108th Congress alone, the Senate voted 20 times to end debate on 10 different nominees. Each time, cloture failed. We spent more time debating judicial nominations during those 2 years than in any previous Congress. This partisan obstructionism was unprecedented. This routine use of the filibuster was wrong. Never in 214 years had a minority denied a nominee with majority support that fair up-or-down vote. The minority had used the filibuster to seize control of the appointments process. They used it unfairly to apply a new political standard to judicial nominees and to deny a vote to any nominee who did not subscribe to a liberal, activist, ideological agenda.

To justify this unprecedented obstruction, Democratic leaders unfairly attacked the character of these nominees. They sought to paint them as extremists and radicals and threats to our society and our institutions. But the American people saw through the attacks. They saw them for what they were, purely partisan.

Finally, early this year the Republican leadership said: Enough is enough; enough obstruction, enough partisanship, enough disrespect to these good, decent, and accomplished professionals. We put forward a very simple, straightforward principle. A nominee with the support of a majority of Senators deserves a fair up-or-down vote. And we led on that principle. Because we did that, seven nominees who had been previously filibustered, or blocked, obstructed in the last Congress—and we were told at the time would be blocked in this Congress—got fair up-or-down votes and were confirmed and now sit on our circuit courts. A new Chief Justice of the United States, Chief Justice Roberts, now sits at the helm of the High Court.

If we had not led on principle, there would have been no Gang of 14. Filibusters would have become even more routine and led to more obstruction. However, the sword of the filibuster has been sheathed because we are placing principle before politics, results before rhetoric.

With the nomination of Sam Alito before the Senate, this Senate must again choose principle or partisanship. Should we choose to lead on the principle that judicial nominees, whether nominated by a Republican or a Democrat, deserve an up-or-down vote, or should we revert to the partisan obstructionism of the past? I believe a bipartisan group of Senators will choose today to put principle first.

Last week, the distinguished minority leader said there has been adequate time for people to debate. No one can complain in this matter that there has not been sufficient time to talk about Judge Alito, pro or con. I could not agree more with my colleague and friend. It is time to end debate. It is time to move on. Since President Bush announced Judge Alito's nomination on October 31, Senators have had 91 days to review his nomination, to review his records, his writings.

To put that in perspective, Chief Justice John Roberts' confirmation took 72 days, even including an extra week's delay to pay respects to his predecessor, Chief Justice Rehnquist. Justice O'Connor, who Judge Alito will replace, was confirmed in 76 days. President Clinton's two Supreme Court nominees, Justices Ginsburg and Breyer, got a fair up-or-down vote in an average of 62 days. Judge Alito today is at 91 days.

During this 3-month period since Judge Alito was nominated, Members have had an abundance of his written materials, documents, and opinions to review. They have had over 4,800 opinions from his tenure on the Third Circuit Court of Appeals spanning 27,000 pages; another 1,000 pages of documents from Judge Alito's service at the Department of Justice; numerous speeches and news articles. The list goes on and on.

Members have had 30 hours of testimony from Judge Alito's judicial committee hearings; statements of 33 witnesses, including 7 who are Judge Alito's colleagues on the Third Circuit; Judge Alito's answer to over 650 questions, doubling the number of questions that either of President Clinton's Supreme Court nominees answered; and 4 days of debate in the Senate.

Despite all this, some Members have launched a partisan campaign to filibuster this nominee and have forced the Senate to file cloture which we will be voting on. Certainly, it is any Senator's right to force this vote, but it sets an unwelcome precedent for the Senate.

As a reminder to my colleagues, the Senate did not have a cloture vote on any of the nine Justices currently sitting on the Supreme Court. Judge Alito has majority support. A bipartisan majority of Senators stands ready to confirm him and have announced their support. Judge Alito deserves to be Justice Alito. He has the professional qualifications, the judge temperament and integrity our highest Court deserves.

Whether Members agree with me, whether Members support him, we should not prevent Judge Alito from getting a vote. I urge my colleagues to join me in voting for cloture. It is our constitutional obligation of advise and consent, because it is fair and because it is the right thing to do.

Senators stand for election; judges should not. Absent some extraordinary evidence, we should not challenge a nominee's personal character, credibility, or integrity. Continuing down this path could deter qualified men and women from putting their names forward for nomination, from volunteering to serve their country as Federal judges. It could threaten the quality Americans most desire in their judiciary: fairness and independence.

A vote today for cloture is a vote to support all we have done over the past 3 years to repair what was broken. True, it is a vote to bring Sam Alito's nomination to a fair up-or-down vote, but it is also a vote that is so much more. It is a vote to demonstrate Members working together to end partisan obstructionism and to lead on that simple principle that every judicial nominee, with majority support, deserves a fair up-or-down vote.

In closing, if I may borrow the words of my good friend Senator KENNEDY from 1998:

> We owe it to Americans across the country to give these nominees a vote. If our [colleagues] don't like them, vote against them. But give them a vote.

I agree with Senator KENNEDY's statement. I say to my colleagues, if you do not like Judge Alito, vote against him. That is your right. But let's give him a vote. That is our constitutional duty.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, I will use leader time.

I want the record spread with the fact that Senator ENSIGN will miss the vote today. The Senate is very fortunate. He was in a head-on collision in Las Vegas going to the airport to return to Washington, DC. I spoke to him from the hospital. He is going to be fine. He has no head injuries. The bags inflated, and I am sure saved him great bodily pain. I talked to him. He was under some medication. He said he is sore but he is going to be fine.

With all the travel we do, we all live on the edge of something happening. I am so happy Senator ENSIGN is fine. He is a wonderful man. He has great faith. He is a good friend of mine and to all of the Senate. I know all of our thoughts and prayers will be with him. I am confident he is going to be fine.

As indicated, I spoke with him. I want Darlene, especially, to know our thoughts are with her and the children.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 4:30 having arrived, the Senate will proceed to a vote on the motion to invoke cloture on Executive Calendar No. 490.

Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Samuel A. Alito, Jr., of New Jersey to be an Associate Justice of the Supreme Court of the United States.

Bill Frist, Elizabeth Dole, Michael B. Enzi, Jim DeMint, Wayne Allard, Kit Bond, John Ensign, Arlen Specter, Rick Santorum, Kay Bailey Hutchison, Pete Domenici, Judd Gregg, Lisa Murkowski, Norm Coleman, George Allen, Mitch McConnell.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 490, the nomination of Samuel A. Alito, Jr., of New Jersey, to be Associate Justice of the Supreme Court of the United States, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Nevada (Mr. ENSIGN) and the Senator from Nebraska (Mr. HAGEL).

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN) is necessarily absent.

I further announce that if present and voting, the Senator from Iowa (Mr. HARKIN) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 72, nays 25, as follows:

[Rollcall Vote No. 1 Ex.]

YEAS—72

Akaka	Cantwell	DeWine
Alexander	Carper	Dole
Allard	Chafee	Domenici
Allen	Chambliss	Dorgan
Baucus	Coburn	Enzi
Bennett	Cochran	Frist
Bingaman	Coleman	Graham
Bond	Collins	Grassley
Brownback	Conrad	Gregg
Bunning	Cornyn	Hatch
Burns	Craig	Hutchison
Burr	Crapo	Inhofe
Byrd	DeMint	Inouye
Isakson	McConnell	Smith
Johnson	Murkowski	Snowe
Kohl	Nelson (FL)	Specter
Kyl	Nelson (NE)	Stevens
Landrieu	Pryor	Sununu
Lieberman	Roberts	Talent
Lincoln	Rockefeller	Thomas
Lott	Salazar	Thune
Lugar	Santorum	Vitter
Martinez	Sessions	Voinovich
McCain	Shelby	Warner

NAYS—25

Bayh	Jeffords	Obama
Biden	Kennedy	Reed
Boxer	Kerry	Reid
Clinton	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
Dodd	Levin	Stabenow
Durbin	Menendez	Wyden
Feingold	Mikulski	
Feinstein	Murray	

NOT VOTING—3

Ensign	Hagel	Harkin

The PRESIDING OFFICER. On this vote, yeas are 72, the nays are 25. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, I ask unanimous consent to speak for 15 minutes.

Mrs. BOXER. Mr. President, reserving the right to object, and I will not object, would my friend extend his unanimous consent request to include the following Democratic Members: Senator BOXER for 20 minutes, Senator BAUCUS for 20 minutes, Senator DODD for 20 minutes, and Senator BIDEN for 5 minutes.

Mr. DEMINT. Mr. President, I do add that to the request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina is recognized.

STATE OF THE UNION ADDRESS

Mr. DEMINT. Mr. President, today the Democratic leader, HARRY REID, gave what was billed as a ''prebuttal'' to the President's upcoming State of the Union Address.

I am, frankly, astounded that he would criticize a speech so harshly that has not even been given yet.

I will let the President speak for himself when he addresses the Nation tomorrow night, but this misleading partisan rhetoric put forth on this floor by the Senator from Nevada cannot go unanswered, rhetoric which, unfortunately, further proves Democrats will say anything but do nothing.

Today, we heard many of the same tired cliches from the minority leader. He talks about a credibility gap. Well, the largest credibility gap in American politics is between what Democrats say and what they do. Democrats promised months ago to bring forth their own legislative agenda, but the Nation is still waiting. Day after day, the Democrats launch attack after attack on Republicans and our agenda, but how are we to take them seriously when they cannot articulate a clear plan of their own? They will say anything to get a media sound bite, but when it comes to solving today's challenges, Democrats do nothing.

It has been 4 years since 9/11, and after all their rock-throwing, Democrats still have no plan for victory in the war on terror. In fact, they have undermined the war effort with partisan attacks on the President.

They have complained about the economy since President Bush took office, but almost everything they do makes it harder for American businesses to compete.

Democrats spent the last year criticizing Republican efforts to strengthen Social Security but still offer nothing to fix this system in crisis. They even refuse to guarantee benefits for today's seniors and blocked a bill that would have stopped Congress from spending Social Security dollars on other Government programs.

They have decried looming deficits but offer no map to a balanced budget, instead calling for higher taxes and more spending programs.

How are we to take seriously a party that has no legislative agenda, that has no solutions or ideas to solve America's greatest challenges?

In stark contrast to the Democrats' invisible agenda, Republicans have clearly articulated and delivered a bold agenda to secure America's future. And while we have had some victories in recent years, the truth is that Democrats have fought bitterly to block progress for America every step of the way. Then these same Democrats come to this floor and blame inaction on Republicans.

To give just one example, Republicans have been working for decades to secure America's energy independence. However, Democrats, at the behest of extreme environmental activists, oppose real solutions to high energy prices such as increasing production of domestic oil and natural gas supplies and removing barriers to oil refinery investment such as onerous permitting requirements and a proliferation of boutique fuel blends.

Just last month, Democrats blocked energy exploration and production on the Coastal Plain of the Arctic National Wildlife Refuge which would provide millions of barrels of oil a day, or about 4.5 percent of the current U.S. consumption, with no significant environmental impact.

It is not just in Alaska where Democrats oppose efforts to access our Nation's energy resources. It has been estimated that enough natural gas lies under the Outer Continental Shelf and in the interior Western States to supply 27 years' worth of natural gas consumption, the primary fuel used to heat Americans' homes. Yet Democrats support policies that have closed these areas to exploration and production.

The administration has attempted to cut regulatory redtape, reduce regulatory costs, and streamline regulatory processes to allow more sensible use of the Nation's energy resources, while maintaining environmental standards—efforts that have been largely rebuffed by Democrats in Congress.

The obstacle to America's energy independence is clear: it is the blockade formed by the Democratic Party. In seeking to appease far-left interest groups, Democrats have blocked Republican efforts to reduce our dependence on foreign oil and have needlessly allowed energy prices to climb higher and higher for America's families.

Senator REID likes to say Democrats can do better. I think he is right, Democrats should do better. They have been conducting a war of rhetoric for years without offering anything positive to the public debate. Americans are rightly frustrated with a Democratic Party that will say anything but do nothing.

Now let me address what has become the favorite sound bite of the Democratic Party. Senator REID said it today and many times over the last week, what he likes to call the ''culture of corruption.'' Apparently, Democrats believe this media strategy will carry them to a sweeping electoral victory in November. I have news for my Democratic colleagues: The problem of outside influence on Congress is not a partisan issue. This is a bipartisan problem and requires a bipartisan solution.

For those hoping to usher in a new Democratic majority in Congress on a media sound bite, history teaches us that elections are won on ideas, not rhetoric. Americans are far too smart and today's challenges are far too serious for Democrats to expect they can coast to a victory in November with no solutions and no ideas.

Republicans learned this lesson long ago from one of our greatest teachers, Ronald Reagan. President Reagan always talked about ideas that still resonate with Americans today: limited government, personal freedom and responsibility, and peace through strength.

Republicans did not win on rhetoric in 1994. We won because Americans agreed with our solutions: lower taxes, fiscal responsibility, traditional values, and strong national defense.

President Bush has connected with the American people because he has run his campaigns on ideas. He promised to lower taxes, and he has. He promised to aggressively fight the war on terror to protect American families, and he has. He promised to nominate judges who will follow the law instead of creating it, and he has.

Yet, as Senator REID demonstrated today, Democrats still do not understand that Americans want solutions, not more partisan rhetoric. I know there are some Democrats who do have some good ideas and desire to work together to improve the lives of Americans. I have talked to many of my colleagues on the other side of the aisle who do seem to understand the reality, but their leadership refuses to allow them to break from the party line.

I urge the Democratic Party to think long and hard about the war of rhetoric they are waging. It is poisoning the atmosphere in the Senate, and it is turning off Americans from the public debate. The consequences of these actions will be fewer and fewer Democrats returning next year. This has been proved out during the last elections, as I and my fellow freshman Republican Senators can testify.

If Democrats sincerely want the opportunity to govern again, they need to abandon this ''say anything, do nothing'' stance and put forward some ideas and solutions. Regardless, the Republican Party will not wait around. We will continue to secure America's future with a bold, positive agenda.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I wish to amend the unanimous consent agreement to add an additional 10 minutes for Senator BAUCUS, which will give him 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DEMINT. Mr. President, I ask the Senator to add to her request that following the Democratic-allowed time that has already been agreed to, Senator INHOFE be recognized for up to an hour.

Mrs. BOXER. Certainly. I ask that at the conclusion of Senator BIDEN's remarks, Senator INHOFE be recognized for up to an hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Mr. President, I was listening to the Senator from South Carolina. I thought he was going to make some comments about the vote that just took place on one of the most important issues facing the Senate. Instead, he launched into an attack on Senator HARRY REID.

Shakespeare once said something to this effect: When someone acts that way, he is protesting too much. So Senator REID must have hit a chord with the Senator from South Carolina, and there are reasons for it.

Senator REID speaks straight from the heart, straight from the shoulder. He is fighting for the American people. He wants us to fix the mess this President and this Congress made in the Medicare prescription drug benefit. He wants us to take care of our men and women in uniform. He wants to make sure the budgets are balanced. He wants to make sure that our families have health care, that we are moving forward on homeland security, and cleaning up the culture of corruption which has been brought to us by the ruling party. Remember, we have one party that rules Washington.

So I think his remarks must have deeply touched the Senator from South Carolina for him to launch into such a personal attack on the Democratic leader. I stand here and say: Keep it up, Senator REID. You must be doing something right to elicit that kind of outrageous response.

Mr. President, many of us have been in elected life for more than a decade—in my case, three decades—and we know that when certain issues come before us, they are so profound, they are so important to the people we represent, they are such a watershed that they need to be marked, not rushed.

The vote on Samuel Alito to be a Justice of the Supreme Court is such a moment in our history. Yes, we are having two votes on this nomination, one just completed, which gave me and other opponents of the nomination an opportunity to signal that this nomination should be sent back to the President for a mainstream nominee in the mold of Sandra Day O'Connor.

We fell short of the 41 votes we needed to send this nomination back. But yet I am still glad I had the opportunity to go on record twice. And do you know why? Because the Supreme Court belongs to the people of America. It is their court. It is not George Bush's court. It is not any Senator's court. It is the people's court, and the highest court. It is their freedoms that are at stake, their protection from a power-hungry Executive, their right to clean air, to clean water, and safe communities, their right to make private decisions with their families, not with Senators and Congressmen and a President or Vice President breathing down their necks.

So although we knew the votes were not there for the filibuster of Judge Alito, we felt it was appropriate to use that historic Senate debate tool so the American people would know that we were willing to pursue even a losing effort because the stakes are so high.

Tomorrow, we will cast our votes on the nomination itself, and I want the record to reflect why I will be voting no.

Mr. President. Every judicial nomination is important, but rarely are the stakes as high for the Nation as they are in the case of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court.

We now have a divided Court, a divided Congress, and a divided electorate, as evidenced in the last two Presidential elections. Unfortunately, we also have a President who failed to remember his promise, which he made in the campaign of 2000: to govern from the center—to be ''a uniter, not a divider.'' If he had kept that promise, he would not have nominated Samuel Alito.

Judge Alito was nominated to take the seat of Justice Sandra Day O'Connor, the first woman on the Court. She has long been the swing vote, and a commonsense voice of moderation, in some of the most important cases to come before the Court, including a woman's right to choose, civil rights, and freedom of religion.

The right thing to do for the court and for the Nation would have been to nominate someone in the mold of Justice O'Connor, and that is what the President should have done.

Let me be clear: I do not deny Judge Alito's judicial qualifications. He is experienced, intelligent, and capable. His

family should be proud of him, and all Americans should be proud that the American dream was there for him and for the Alito family.

But these facts do not outweigh my deep conviction that Judge Alito's extreme views of the law make him the wrong person for this job.

As a Senator, I have no more solemn duty than to vote on a nomination for the Supreme Court of the United States. These are lifetime appointments, with extraordinary power to shape the law of the land, and to affect the lives of Americans, not just those living now, but for generations to come.

In the 218 years since our Constitution was adopted, our Nation has made great strides toward achieving the more perfect Union that the Founding Fathers dreamed of Women were given the right to vote. African-Americans were given civil rights. A right to personal privacy has been recognized for women and families. The accused have a right to counsel. Congress has been recognized to have the power to enact laws protecting the health and safety of the people. This has led to a cleaner environment, safer workplaces and communities, and better health care for all Americans.

We who have enjoyed the fruits of this progress owe it to future generations not to let it slip away. Thus, in a vote such as this, which will have long lasting effects, it is incumbent on us to consider what those effects might be.

If Judge Alito is confirmed, he will join the far right wing of the Court now led by Justices Scalia and Thomas. Should their extreme views of the Constitution ultimately prevail—as they may well do in the very near future—I fear they will take our Nation on a backward path—toward a time of fewer rights for individuals and greater restrictions on Congress's ability to protect the public health and welfare. In addition, I believe that Judge Alito will support Justice Thomas's radical ideas about stronger Presidential powers.

In short, our children could end up living in a very different America from the one we treasure. What kind of Nation would that be?

Abortion undoubtedly would be illegal in many States. Dangerous automatic weapons might become broadly available. It might be almost impossible to get a claim of workplace discrimination to a jury. Search warrants might not have to be issued, or if they were, wouldn't have to be specific. The Nation's most important environmental laws might be made toothless for lack of enforcement in the courts. Trial by jury, one of the most precious of all rights guaranteed to Americans by their Constitution, could be tainted by racism in the selection of Jurors.

This is a harsh picture, but I believe it is not unrealistic. If you consider where the Court is now and consider Judge Alito's record and views carefully, you must conclude, as I did, that approving his nomination could have dire consequences for our Nation.

In reviewing Judge Alito's record, I asked myself whether, as a Supreme Court Justice, he would be likely to vote to preserve fundamental American liberties, values, and interests for all the people.

Would Justice Alito vote to uphold Congress's constitutional authority to pass laws to protect Americans' health, safety, and welfare? The record says no. When his Third Circuit Court of Appeals voted to uphold a ban on machine gun possession, Judge Alito voted to strike it down because he said Congress lacked the power to enact such a law. His colleagues on the court criticized him, saying his position ran counter to ''a basic tenet of the constitutional separation of powers.''

Would Justice Alito vote to protect the right to privacy, especially a woman's reproductive freedom? Judge Alito's record says no. We have all heard about Judge Alito's 1985 job application which he wrote that the Constitution does not protect the right of a woman to choose. When given the chance to disavow that position during the hearings, he refused to do so. He had the chance to say, as Judge Roberts did, that Roe v. Wade is settled law, and he refused.

When given the chance to explain his dissent in the Casey decision, in which he argued that the Pennsylvania spousal notification requirement was not an undue burden on a woman seeking an abortion because it would affect only a small number of women, he refused to back away from his position. The Supreme Court, by a 5 to 4 vote, found the provision to be unconstitutional, and Justice O'Connor, cowriting for the Court, criticized the faulty analysis supported by Judge Alito, saying that ''the analysis does not end with the one percent of women'' affected. ''it begins there.''

Judge Alito's ominous statements and narrow-minded reasoning clearly signal a hostility to women's rights, and portend a move back toward the dark days when abortion was illegal in many States, and many women died as a result.

In the 21st century, it is astounding that a nominee for the Supreme Court would not view Roe v. Wade as settled law. The fundamental principle of Roe—a woman's right to make reproductive choices for herself—has been reaffirmed many times since it was decided.

Would Justice Alito vote to protect Americans from illegal searches in violation of the fourth amendment? Judge Alito's record says no. In a 2004 case, he found that a police strip search of a 10–year-old girl was lawful, even though she was not named in the warrant. Judge Alito said that even if the warrant did not actually authorize the search of the girl, ''a reasonable police officer could certainly have read the warrant as doing so . . .''

This cavalier attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is stunning. As Judge Alito's own court said regarding warrants, ''a particular description is the touchstone of the fourth Amendment.'' Americans have reason to fear a Supreme Court justice who does not understand this fundamental constitutional protection.

Would Justice Alito vote to let citizens stop companies from polluting their communities? The record says no. In a case involving toxic discharges into a major river, Judge Alito voted to stop citizens from taking the polluting company to court, as they were authorized to do under the Clean Water Act. Fortunately, in another case several years later, the Supreme Court overturned Alito's narrow reading of the law.

Would Justice Alito vote to let working women and men have their day in court against employers who discriminate against them? Judge Alito's record says no. In a 1997 case, Judge Alito was the only judge to say that a hotel employee claiming racial discrimination could not take her case to a jury. His colleagues on the court said that if his standard for getting to a jury were required of a plaintiff, it would ''eviscerate'' title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace.

In another case, a female employee sued for discrimination, alleging that after she complained about incidents of sexual harassment, she was demoted and marginalized to the point that she was forced to quit. By a vote of 10 to 1, the Third Circuit found for the plaintiff. Guess who was the one? Only Judge Alito thought the employee should have to show that discrimination was the main cause of the employer's action. Using his standard would make it almost impossible for a woman claiming discrimination in the workplace to get to trial.

Would Justice Alito be an effective check on an overreaching executive branch? Judge Alito's record says no. As a Judiciary Department lawyer, Alito wrote a memorandum proposing that the President assert his own interpretations of statutes by issuing ''signing statements'' when the laws are enacted. He said this would give the Executive ''the last word'' on interpreting the laws.

The administration is now asserting vast powers, including spying on American citizens without seeking warrants, in clear violation of the Foreign Intelligence Surveillance Act, violating international treaties, and ignoring laws that ban torture.

We need Justices who will put a check on such overreaching by the Executive, not rubberstamp it. Judge Alito's record and his answers at the hearings raise very serious doubts about his commitment to being a strong check on an ''imperial President.''

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the

tough questions her husband faced in the Judiciary Committee.

Everyone in politics knows how hard it is for families when a loved one is asked tough questions. It is part of a difficult process, and whoever said politics is not for the faint of heart was right.

Emotions have run high during this process. That is understandable. But I wish the press had focused more on the tears of those who will be affected if Judge Alito becomes Justice Alito and his extreme views prevail.

I worry about the tears of a worker who, having failed to get a promotion because of discrimination, is denied the opportunity to pursue her claim in court.

I worry about the tears of a woman who is forced by law to tell her husband that she wants to terminate her pregnancy and is afraid that he will leave her or stop supporting her.

I worry about the tears of a young girl who is strip searched in her own home by police who have no valid warrant.

I worry about the tears of a mentally retarded man who has been brutally assaulted in the workplace, when his claim of workplace harassment is dismissed by the court simply because his lawyer failed to file a well-written brief on his behalf.

These are real cases in which Judge Alito has spoken. Fortunately, his views did not prevail in these cases. But if he sits on the Supreme Court, he will have a much more powerful voice. His voice that will replace one of moderation and balance, and he will join the voices of other Justices who share his severe views.

Perhaps the most important statement Judge Alito made during the entire hearing process was when he told the Judiciary Committee that he expects to be the same kind of Justice on the Supreme Court as he has been a judge on the Circuit Court.

That is precisely the problem. As a judge, Samuel Alito seemed to approach his cases with an analytical coldness that reflected no concern for the human consequences of his reasoning.

Listen to what he said about a case involving an African-American man convicted of murder by an all white jury in a courtroom where the prosecutors had eliminated all African-American jurors in many previous murder trials as well.

Judge Alito dismissed this evidence of racial bias and said that the jury makeup was no more relevant than the fact that lefthanders have won five of the last six Presidential elections. When asked about this analogy during the hearings, he said it ''went to the issue of statistics . . . (which) is a branch of mathematics, and there are ways to analyze statistics so that you draw sound conclusions from them. . . .''

That response would have been appropriate for a college math professor, but it is deeply troubling from a potential Supreme Court Justice.

As the great Jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in 1881:

> The life of the law has not been logic; it has been experience . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

What Holmes meant is that the law is a living thing, that those who interpret it must do so with wisdom and humanity, and with an understanding of the consequences of their judgments for the lives of the people they affect.

It is with deep regret that I conclude that Judge Alito' s judicial philosophy lacks this wisdom, humanity, and moderation. He is simply too far out of the mainstream in his thinking. His opinions demonstrate neither the independence of mind nor the depth of heart that I believe we need in our Supreme Court Justices, particularly at this crucial time in our Nation's history.

That is why I must oppose this nomination.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

Mr. BAUCUS. I ask unanimous consent the order for recognition of Senator BIDEN be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, on the corridor of the first floor of this Capitol building appear the words of Samuel Adams:

> Freedom of thought and the right of private judgment in matters of conscience direct their course to this happy country.

America still stands as the world's beacon of individual rights and liberties. Of that I know we are very proud. In large part, it is because of our Supreme Court. Our Founding Fathers were very wise setting up three separate branches of Government, including a very strong, independent judiciary, something many countries have struggled to attain, and their failure to achieve greatness is largely because they do not have a very strong, independent judiciary—and I mean independent.

The Senate protects the independence of the Supreme Court. How? By seriously exercising its responsibility to advise and consent on the nominations to that honorable Court. It is in the Constitution. We all take that duty seriously. We take it seriously by examining nominees. I personally have three criteria I use to examine nominees. They are professional competence, personal integrity, and a view of important issues within the mainstream of contemporary judicial thought. Let me review those three criteria.

First, professional competence. The Supreme Court must not be a testing ground for the development of a jurist's basic values. Nor should a Justice require further training. The stakes are simply too high. The nominee must be an established jurist already. Of that we must be very clear.

A second criteria is personal integrity. Nominees to our Nation's highest court must be of the highest caliber.

Third, the nominee should fall within the broad mainstream of contemporary judicial thought. Justices must possess the requisite judicial philosophy to be entrusted with the Court's sweeping constitutional powers. I believed that then-Judge and now Chief Justice Roberts met those tests. That is why I voted to support his confirmation.

Measuring Judge Alito against these three criteria, I have decided he does not meet these three tests. I do not think he is the right choice for my State of Montana or for our country.

This was not an easy decision. I grappled with it. I took my time. I have reviewed this nomination very carefully. I reviewed Judge Alito's prior writings and case rulings. I reviewed his Judiciary Committee testimony and I met with Judge Alito personally for over an hour.

Nominations to the Supreme Court rank among the Senate's most important decisions. Only the brightest, most objective minds should serve on the bench. But Judge Alito, in my judgment, stands outside the mainstream. I base my decision on what I think is right for my State and my country, and that is why I cannot support this nomination.

I reviewed the Judiciary Committee's hearings. The Judiciary Committee held 5 days of hearings. The committee questioned Judge Alito for 4 days. The committee heard from panels supporting and opposing his nomination. The Judiciary Committee members sought Judge Alito's views on many matters, including States rights, antidiscrimination laws, immigrant rights, due process, privacy, equal protection, ethical considerations, and broad judicial philosophy. Judge Alito responded eloquently, but he provided little detail. Members of the Committee attempted to pin Judge Alito down on many of his views, but Judge Alito did not offer detailed answers to their questions, at least not enough information to get a sense of who he was and where he was. Judge Alito appeared well prepared for these hearings—very well prepared, I might add. He appeared to have been advised to say as little as possible.

On January 24, the Judiciary Committee voted to report Judge Alito's nomination on a party-line vote. Unfortunate, but that is how it turned out; again, I think in part because of the nature of the nominee's views.

Let me take a few moments to examine Judge Alito's nomination in greater detail against the criteria I have laid out. First, professional competence. Mr. Alito received an excellent education. He holds an undergraduate degree from Princeton and a law degree from Yale School of Law. Judge Alito also has extensive experience as a judge, serving 15 years as a

judge on the Third Circuit Court of Appeals. In fact, he has served more years on the bench than many nominees to the Supreme Court.

Mr. Alito's work prior to his judicial appointment focused exclusively on representing only one client, the U.S. Government. Some have raised questions about Judge Alito's experience protecting the rights of individuals rather than the Government. I conclude that Judge Alito is professionally competent to serve as a Supreme Court Justice.

Second, personal integrity. Several issues arise from Judge Alito's promise to avoid conflicts of interest as a judge. Some raised questions about Judge Alito's sensitivity to the avoidance of conflicts of interest, and some raised questions about how steadfastly Judge Alito keeps his commitments to the Senate.

In 1990, Judge Alito told the Senate Judiciary Committee that he would disqualify himself from any cases involving five matters with which he had personal connections. Those matters were the Vanguard Companies, the brokerage firm of Smith Barney, the First Federal Savings & Loan of Rochester, New York, his sister's law firm, and matters that he worked on or supervised at the United States Attorney's Office in New Jersey. In the period of 1995 to 2002, however, Judge Alito heard cases related to these matters.

Judge Alito initially blamed the conflicts of interest on a computer glitch. In subsequent correspondence with Senators on the Judiciary Committee, Judge Alito argued that his promise during his 1990 confirmation hearings referred to only his ''initial service.'' He argued that as his service continued, he found unduly restrictive his 1990 promise to recuse himself from cases involving entities in which he had a financial interest. And he argued that the mutual funds in which he was invested were not at issue in the case that he heard.

In his responses to questions concerning Vanguard, Judge Alito testified:

I think that once the facts are set out, I think that everybody will realize that in this instance I not only complied with the ethical rules that are binding on federal judges—and they are very strict—but also that I did what I've tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

But Judge Alito also admitted to Senator KENNEDY that ''if I had to do it all over again, I would have handled this case differently.''

Judiciary Committee members also asked about Judge Alito's membership in an organization called Concerned Alumni of Princeton. In his 1985 job application to the Reagan Justice Department, Judge Alito listed Concerned Alumni of Princeton as one of his extracurricular activities. Concerned Alumni of Princeton is an alumni group that took the extreme position of arguing against letting women and minorities attend Princeton. When questioned about Concerned Alumni of Princeton, Judge Alito claimed that he had no recollection of ever having been a member of the group.

Judge Alito testified:

I really have no specific recollection of that organization. But since I put it down on that statement, then I certainly must have been a member at that time. . . . I have tried to think of what might have caused me to sign up for membership, and if I did, it must have been around that time. And the issue that had rankled me about Princeton for some time was the issue of ROTC. I was in ROTC when I was at Princeton and then until it was expelled from campus, and I thought that was very wrong.

Judge Alito's response about Concerned Alumni of Princeton raises concerns. In 1985, he apparently thought that his membership in this discriminatory organization was important enough to put on his page-and-a-half job application. His failure of memory now about that inconvenient position then raises questions about his credibility.

I am also disappointed that the White House has chosen not to release Judge Alito's tax returns for review by the Joint Committee on Taxation. On December 13 of last year, I introduced a bill that would require all Supreme Court nominees to submit 3 years of tax returns to the nonpartisan Joint Committee on Taxation for review on a confidential basis. The Joint Committee would report its findings on the nominee's tax compliance to the Finance and Judiciary Committee.

I might add that all nominees who are referred to the Finance Committee—from Cabinet Secretaries to Tax Court judges—have their tax returns reviewed for compliance. The reviews are discreet and confidential. We protect nominees' personal information. And I might say that in several cases we found errors of facts, matters that had to be attended to—and they were.

I understand the administration does a ''tax check'' for all Supreme Court nominees. They say they already do one. But I believe it is important for Congress to do its own due diligence on a nominee's tax returns. After all, this is a person who serves on the judiciary. That is a separate branch, not the executive, not the judicial. Both entities—namely both the Executive and the congressional—have a stake in making sure that the nominee's tax returns comply with the law.

I might also say, as I mentioned earlier, many so-called tax checks the administration has taken on other nominees have been very inadequate, full of mistakes, and we have had to correct them.

The Finance Committee views proof of the nominee's tax compliance as a testament to the nominee's integrity. What individuals do on their tax returns is a window on their ethical decision making. It is a good test of integrity and character.

The American people expect their national leaders to comply faithfully with the tax laws. A showing that leaders in the Federal Government faithfully comply with the tax laws sends an important message to people who might consider cheating on their taxes.

On January 19, President Bush appeared to agree. He told small business leaders in Sterling, VA, that public officials' tax returns should be public, because public officials have a ''high responsibility to uphold the integrity of the process.''

When I met with Judge Alito, I asked him to release his tax returns for such a review. He initially agreed to do so. But the White House official present at the meeting immediately intervened to block the release saying that he cannot do so.

The President was right when he said in Virginia that the release of public officials' tax returns contributes to the integrity of our whole tax system. And his White House was wrong to withhold that information on Judge Alito. I will continue to press future nominees to allow this kind of neutral review of their tax, returns because I think it is the right thing to do.

Let me turn now to judicial philosophy.

I do not believe that a Senator should oppose a nominee just because the nominee does not share that Senator's particular judicial philosophy. But the Senate must determine whether a nominee is in the broad mainstream of judicial thought. Is this a wise person, not an ideologue of the far left or the far right. The Senate must determine whether a nominee is committed to the protection of the basic Constitutional values of the American people.

What are those values?

One is the separation of powers of our Federal Government—including the independence of the Supreme Court itself.

Another is freedom of speech. Another is freedom of religion. Another is equal opportunity. Another is personal autonomy—the right to be left alone. And yet another is an understanding of the basic powers of the Congress to pass important laws like those providing for protection of the environment.

These are not unimportant matters. They are hugely difficult—all of these are.

The stakes are high. The Senate has a duty to ensure that the nominee will defend America's mainstream Constitutional values.

Judge Alito's record calls into question his ability to act as a check on executive powers. Recently, many have noted with concern the National Security Agency's surveillance of American citizens. At the Judiciary Committee's hearing, a number of questions focused on Judge Alito's interpretations of executive power, and the importance of the court's role as an effective check on overreaching presidential power and on government intrusion.

Judge Alito responded that ''no person is above the law.'' But he did not provide assurances that he would act on the Court to balance executive authority. His prior statements and court rulings indicate that he has an expansive view of the scope of executive power and a narrow view of Congress's authority to legislate.

In a 1984 memorandum, Mr. Alito argued that the Attorney General deserves blanket protection from lawsuits when acting in the name of national security, even when those actions involve the illegal wiretapping of American citizens.

In a 2000 speech to the Federalist Society, Judge Alito said that ''the theory of a unitary executive . . . best captures the meaning of the Constitution's text and structure.'' Judge Alito said: ''The President has not just some executive powers, but the executive power—the whole thing.'' Some have thus interpreted the theory of a unitary executive to support the proposition that the Constitution reserves all executive power exclusively for the President. The theory would thus prohibit other branches of Government from carrying out any power that one could characterize as having executive characteristics. This view of executive power could limit Congress's ability, for example, to create independent agencies such as the SEC with oversight duties. And some believe that this view could allow the President the ability to legislate through signing statements.

When Senator LEAHY pressed Judge Alito about his view of the unitary executive as well as his strategy of utilizing Presidential signing statements to expand executive authority, Judge Alito responded that he did not see a connection between these two principles.

In a 1986 memo, Mr. Alito argued that ''the President's understanding of the bill should be just as important as that of Congress.'' He argued that signing statements would allow the President to ''increase the power of the Executive to shape the law.''

President Bush has employed this method of Presidential signing statements to document his interpretation of congressional legislation, again even though he is certainly not a member of Congress. He didn't write the law. How could he say what Congress intended to do? He has, in fact, issued 108 signing statements expanding his executive interpretation of the laws passed by Congress.

Judge Alito's judicial rulings on the Third Circuit Court of Appeals, as well as his 1985 job application to the Reagan Justice Department, do not indicate an expansive view of civil rights and civil liberties. In his 1985 job application, Judge Alito wrote that he developed a ''deep interest in constitutional law, motivated in large part by disagreement with the Warren Court.'' Many credit the Warren Court with expanding civil rights and civil liberties.

Judge Alito has narrowly construed constitutional criminal procedure protections, such as the fourth amendment restrictions on search and seizure. In the case of Doe v. Grody, for example, Judge Alito wrote a dissent. He argued that the strip search of a mother and her 10-year-old daughter without a proper search warrant did not violate their constitutional rights.

That is his dissent, that is his view.

Judge Alito testified:

> It was a rather technical issue about whether the affidavit that was submitted by the police officers was properly incorporated into the warrant for purposes of saying who could be searched. And I thought that it was, and I thought that it was quite clear that the magistrate had authorized a search for people who were on the premises. That was the point of disagreement.

Judge Alito also refused to agree that Congress cannot take away the Supreme Court's ability to protect Americans' First Amendment rights.

In contrast, both Chief Justice Roberts and former Chief Justice Rehnquist have agreed to the position that Congress cannot take away the Supreme Court's ability to protect Americans' first amendment rights. This is sometimes called ''court stripping.'' It is extremely critical, extremely important. It is no academic matter. Basically it is that the Congress can say to the Supreme Court it does not have jurisdiction to hear any cases with respect to, say, the first amendment brought by an individual citizen; that is, Congress can take away the Court's authority to interpret the Constitution with respect to the first amendment. That is what that view held. I think it is an outrageous view. I don't understand how anybody can tentatively hold that view.

Judge Alito defended his viewpoint, saying this is an academic debate on which scholars are divided. I am astounded at that answer.

Judge Alito's rulings on civil rights cases appear to set a high bar for proving unequal treatment. A review of his record indicates that plaintiffs rarely ever prevail. Senator COBURN defended Judge Alito's record by noting that Judge Alito ruled for the ''little guy'' in a list of 13 cases. Judge Alito's record, however, includes almost 500 published and unpublished opinions. Thirteen is not very many out of 500.

Knight Ridder conducted a survey of Judge Alito's published opinions. They concluded that:

> although Judge Alito's opinions are rarely written with obvious ideology, he's seldom sided with a criminal defendant, a foreign national facing deportation, an employee alleging discrimination or consumers suing big business.

I am also concerned by Judge Alito's responses to privacy questions at the Judiciary Committee hearings which conflict with his past statements. In his 1985 job application, Mr. Alito wrote:

> It has been an honor and a source of personal satisfaction for me to serve in the office of the Solicitor General during President Reagan's administration and to help to advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that . . . the Constitution does not protect a right to an abortion.

In June 1985, Mr. Alito wrote a 17-page memo providing a strategy for using the Government's brief in the case of Thornburgh v. American College of Obstetricians and Gynecologists as an ''opportunity to advance the goal of bringing the eventual overruling of Roe v. Wade, and in the meantime, of mitigating its effects.'' Judge Alito advocated a strategy of creating a series of burdens on a woman's right to choose. In the hearings, however, Judge Alito responded to Senator FEINSTEIN that he ''did not advocate in the memo that an argument be made that Roe be overruled.''

In his hearings, Judge Alito acknowledged that the Constitution protects a right to privacy generally. He agreed with the premise in the Griswold case, which protects the right to use contraceptives. It is unclear, however, how widely the right to privacy extends for Judge Alito.

When pressed, Judge Alito refused to acknowledge that the Constitution protects a woman's right to choose. Judge Alito explained that he would approach privacy cases with an open mind.

On the Third Circuit Court of Appeals, Judge Alito also wrote a dissent in the case of Planned Parenthood of Southeastern Pennsylvania v. Casey. In that dissent, he argued that upholding Pennsylvania's restrictive spousal notification requirement did not place an undue burden on women.

Yet Justice O'Connor, writing for the majority of the Supreme Court, wrote that the spousal notification requirement ''embodies a view of marriage consonant with the common law status of married women, but repugnant of our present understanding of marriage and of the nature of the rights secured by the Constitution.''

When questioned specifically about the landmark case of Roe v. Wade, Judge Alito commented that he understands the principle of stare decisis—that courts should honor precedents. But he also said that this principle is not ''an inexorable command.''

Here again, Judge Alito's statements contrast with then-Judge Roberts' comments during his hearings. Judge Roberts said in his hearings that Roe v. Wade was settled law. When Senators asked Judge Alito about Judge Roberts' statements, Judge Alito responded that ''I think it depends on what one means by the term 'settled.' '' Judge Alito engaged in some discussion about what ''settled law'' means to him. His interpretation of how settled the right to privacy is remains unclear.

Judge Alito answered questions about his judicial philosophy by testifying that precedent is entitled to respect. But he would not provide great detail about specific precedents such as Roe v. Wade. Senator FEINSTEIN pushed

Judge Alito to clarify the discrepancy between answering cases about one-person one-vote, but not responding to questions about abortion and precedent. Judge Alito did not give a clear answer.

Judge Alito appears to support deference to the Framers' original intent. Judge Alito testified:

I think we should look to the text of the Constitution, as we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption.

That is called originalism.

Judge Alito's judicial philosophy of original intent raises concerns about whether the Court could adapt to a changing society. And his philosophy indicates that he may not take an active role in extending Constitutional protections to new situations in the 21st century.

I have some concern about one ruling that Judge Alito issued related to the environment. In 2001, in the case of W.R. Grace & Company v. United States Environmental Protection Agency, Judge Alito threw out the Environmental Protection Agency order under the Safe Drinking Water Act for an ammonia-spill cleanup near Lansing, MI. Judge Alito concluded that the government cleanup standard was ''arbitrary and capricious.'' He explained that the reason for not upholding the order was that the EPA lacked a rational basis for imposing the cleanup standards on the company. This case raises sensitivities for me, because in my home state, W.R. Grace has acted with complete disregard of the health effects for Montanans in Libby, where illness from tremolite asbestos caused by W.R. Grace has hit the community hard.

In 1988, Judge Alito commented that Robert Bork ''was one of the most outstanding nominees of this century.'' When I asked Judge Alito about that, he did not provide an adequate response. He ducked the question.

He did not respond adequately to many of my questions. He evaded my questions, questions I asked in good faith, intended to elicit what kind of Justice he might be.

He was vague. He seemed not to want to talk to me. He seemed not to want to have an honest discussion about what kind of person he is. That is why I find it very difficult to support this nominee.

I supported Judge Roberts for Chief Justice in large part because of Judge Roberts' hearing testimony and responses when he met with me personally.

Judge Alito does not meet my standards for a Supreme Court Justice. Judge Alito has explained that he will be ''the same person that I was on the Court of Appeals.'' Judge Alito's record demonstrates that he is a very conservative judge who rules often in favor of expanding executive authority and of limiting civil rights and civil liberties. If the Senate confirms Judge Alito to Justice O'Connor's seat, he could change the balance of the Court, tipping it in a direction that could reverse or restrict important constitutional protections.

Based on all this information, I will vote against this nomination. I believe that Judge Alito is out of the mainstream. He is not the right choice for our country.

On a corridor on the first floor of this Capitol building appear the words of former Supreme Court Justice Louis D. Brandeis, who said:

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

I shall thus vote against this nomination to carry out seriously my responsibility as a Senator to Advise and Consent on nominations to that honorable Court. I shall vote against this nomination because I believe the nominee is well-meaning, but without sufficient understanding of the importance of our cherished rights and liberties. And I shall vote against this nomination to help keep this great country the world's beacon of freedom.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Oklahoma.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is now recognized for up to 20 minutes.

Mr. DODD. Mr. President, I wish to commend my colleague, Senator MAX BAUCUS from Montana, before he leaves the Floor, for a very fine statement. I appreciate his thoughts and comments.

I rise today to discuss my vote on the nomination of Judge Samuel Alito to the United States Supreme Court. First of all, I wish to briefly comment on the cloture vote that occurred this afternoon. I voted not to invoke cloture on the nomination. I want to explain why.

As many of my colleagues know, I went through minor surgery to have a knee replacement before the holidays and I have been home in Connecticut recuperating. I looked forward to coming back to participate in the debate on the Judge Alito nomination and I followed the confirmation process closely from home. For this reason, I was somewhat stunned to learn that Senator FRIST filed a cloture motion on the nomination a day after it was voted out of the Judiciary Committee.

I have been a member of this body for a quarter of a century and I have voted to confirm the majority of the judicial nominations that have come before this Senate. I, too, like my colleague from Montana, voted with enthusiasm for the nomination of Chief Justice Roberts only a few months ago. The majority leader's action was surprising to me. It is exceedingly rare that a cloture motion is filed on debate regarding a Supreme Court nomination. In is my experience, cloture motions have gotten filed when the majority got frustrated with the minority for insisting upon extending debate—beyond a reasonable period of time. In this case, I feel strongly that there has not been a reasonable period of debate, let alone an extended debate.

But I am only one Member. Certainly, this institution cannot wait for one Member. I was allocated only 5 minutes of time this afternoon to comment on this nomination. However, my flight was canceled out of Hartford, CT, and thus, I lost that small window of 5 minutes to be heard. I consider the matter of confirmation of a Supreme Court Justice with great seriousness and solemnity. In my view, some of the most important votes that we make in the Senate are to fill vacancies in the Judicial Branch, second only to declarations of war. Constitutional amendments are not far behind. Therefore, to be notified that I would have only 5 minutes to comment on the nomination of a Supreme Court Justice who will serve for life, far beyond the tenure of the Chairman of the Federal Reserve Board, far beyond the tenure of a President of the United States, far beyond the tenure of a Senator or Congressman, I found rather disturbing.

We have always respected one another here, at least we try to, and to recognize this is the Senate, different entirely from the body down the hall. We are a bicameral body for good reason. This is the place where we spend a little more time evaluating issues that come before the Senate. To ask for a few more days to have discussion about the nominee that has provoked serious controversy in the country, seems little to ask.

Put aside the nominee for a second, put aside your decision to vote for or against the nominee, we should respect one another's desire to be heard on these matters. Tomorrow is the State of the Union, and there will be a photo opportunity for the President. I am deeply disturbed that this Senate may have made a decision to rush this nomination through, to invoke cloture, in order to provide a photo opportunity for a swearing-in ceremony prior to this President's State of the Union Message.

I note the presence of my good friend and colleague from Texas in the chair of the Presiding Officer. He serves on the Judiciary Committee. He watched the gavel-to-gavel hearing proceedings. While I was at home rehabilitating this knee, I had a chance to watch my colleagues do their job. The circumstances around this nomination have been complicated. The nomination came up after Harriet Miers withdrew. We had the Thanksgiving holiday and the recess coming up. In fact, the Judiciary Committee met when we were out of session. Obviously, the desire was to move this along. I have no objection to that. That seems to be a reasonable request to have the committee meet when it did. Certainly, we all had an opportunity to watch those proceedings.

The majority leader stated earlier than we have consumed an excessive amount of time on this nomination.

This statement is correct if we measure it by days on the calendar. If we measure it by days we have actually been here during the last couple of months, it is incorrect. We have been out of session. There have been only a limited number of days in session and only a limited number of votes. Obviously, the number of days that have been consumed since the nominee was presented to this Senate is more than usual due to the circumstances surrounding the nomination and holiday session.

I cannot allow the moment to pass without expressing my concerns about it and the rationale regarding why I voted against cloture. I would have preferred not to have voted on a cloture motion at all. If this were an extended debate, the majority leader might have been right to invoke cloture. I am troubled that now we are setting a new precedent for invoking cloture within only a short time after a nomination comes out of the committee.

Mr. President, I rise today to explain my vote on this nomination. Tomorrow, at 11 a.m., we are going to vote on the Alito nomination.

I would be remiss, obviously, if I did not thank the distinguished chairman of the Judiciary Committee, Senator SPECTER, and the minority ranking member, my good friend from Vermont, Senator LEAHY, for the extraordinary service they have rendered to the Senate, along with their colleagues, during this nomination process.

Over the last several months, these members have managed three separate nominations to the Supreme Court: Chief Justice Roberts, Harriet Miers, and now Samuel Alito. They are to be congratulated for their commitment to fair hearings and for the manner in which they discharged their duties.

The Constitution, as we know, vests in this great body, the Senate, the privilege and the solemn responsibility to advise and give consent to the President on Supreme Court nominations—a unique role in our governance. The Framers intended for the Senate to take an active role in the confirmation process. However, the Constitution does not delineate the factors by which each Member of this body should determine the fitness of a judicial nominee to serve his or her lifetime appointment on the Federal bench. Thus, each Member of the Senate, each Senator, must determine for him or herself the acceptable criteria in judging a Supreme Court nominee.

I have never opposed a nominee solely because he or she holds different views than my own regarding the Constitution or the Court's role in interpreting or applying it. I have supported seven of the last nine nominees to the Supreme Court, including the current President's nomination of John Roberts to be our country's Chief Justice. As I said earlier, I did it with enthusiasm, having witnessed and gone through the process and watched the process of his confirmation hearing.

I, like many of my colleagues, have supported the overwhelming majority of the current President's judicial nominees. Of the current President's 230 judicial nominees, only 5 have failed to be confirmed, a rather remarkable record.

In the course of my Senate career, I have never imposed a litmus test while reviewing Supreme Court nominees. But, due to the nature of a lifetime appointment, I feel they are entitled to a higher level of scrutiny than other judicial nominees for the Federal bench.

I have three specific criteria that a Supreme Court must satisfy: First, I require that the nominee possess the technical and legal skills which we must demand of all Federal judges. Second, the nominee, in my view, must be of the highest character and credibility. And, finally, I vigorously examine the nominee's record to see whether he or she displays a commitment to equal justice for all under the law, in order to protect the individual rights and liberties guaranteed by the Constitution of the United States.

Now, I waited until after the committee vote had occurred last week, and then, in an interview with my local press in Connecticut, indicated how I would vote on this nominee. I have always done that. I have always reserved the first judgment to be made by the committee. It seems to me to respect the committee process is very important, and the views of my colleagues are important to me. Whether I agree with them or not, I like to hear how they have arrived at their decisions.

So on Supreme Court nominees, I have never announced a view on a nominee until after the committee has completed its review. Hence, less than a week after the committee voted, I find myself having to rush to the floor to make a hurried statement on this nominee. I am denied the opportunity to debate back and forth with other members of the Senate.

I waited to make my decision because I felt that Judge Alito deserved a hearing before the Judiciary Committee. I felt that each of us who are not on the committee should have an opportunity to review the transcripts of that hearing and then engage, as nonmembers of the committee, in a discussion of the merits and demerits of this nominee. That has been denied this Member because of the cloture motion filed by the majority leader, provoking what I deeply regret that occurred only a few hours ago, and that was actually to have to vote on a cloture motion.

I did not like casting that vote. I did not want to vote for it, but I felt I deserved the opportunity to be heard. So I do not regret at all that I am a part of a very small minority that voted against cloture. I wish more Members had. But I wish the majority leader had not filed that cloture motion, which provoked the exact scene we saw unfold here a few hours ago.

Now, there is little question in my mind as to Judge Alito's intellectual competence and legal experience, and all of that. If this were the only criteria, I would be for him.

Judge Alito received his legal education from Yale University School of Law in my home State of Connecticut. He served as a Government attorney in a number of positions including: Assistant Solicitor General, Deputy Assistant Attorney General in the Office of Legal Counsel, and U.S. Attorney for the District of New Jersey under President Reagan. In 1990, Judge Alito was nominated by George H.W. Bush to U.S. 3rd Circuit Court of Appeals. In the course of his 15 years on the Federal bench, Judge Alito has heard more than 3,000 cases. Furthermore, the American Bar Association has twice unanimously awarded Judge Alito with their highest rating of ''well qualified.'' I have great respect and admiration for his intellect, legal experience, and service to the American people as part of the Judicial Branch.

''Next, I turn to character and creditability. The question is: Does Judge Alito possess the qualities of mind and temperament expected of a Supreme Court Justice? I do not question whether Judge Alito is personally decent or if he has integrity. I was impressed by the diverse group of former clerks and colleagues who testified before the Judiciary Committee who could not have given him higher praise.

Let me also say I know there were questions raised. I listened carefully regarding these concern including those regarding the Concerned Alumni of Princeton and the recusal issues that were raised by a number of committee members on the Judiciary Committee. These questions, while relevant, and certainly need to be explored, would not have decided my vote on this nominee. I do not minimize it. But if my decision were to be based solely on the recusal question or Judge Alito's membership in the Concerned Alumni of Princeton issue, I would be here supporting this nomination.

Those are not the most important issues to this Member. But what is important are other issues that were raised during this nomination. Indeed, I am troubled that throughout Judge Alito's hearings, Judge Alito failed to provide clear and germane responses to legitimate questions.

A few examples. For instance, when Senator SCHUMER, our colleague from New York, asked Judge Alito if he still believed his statement from the 1985 memo that said the ''Constitution does not protect the right to an abortion,'' rather than reply with a simple yes or no answer, Judge Alito deflected the question and instead replied, ''The answer to the question is that I would address the issue in accordance with the judicial process as I understand it and as I have practiced it.''

When Senator FEINSTEIN of California asked Judge Alito if Roe v. Wade was the settled law of the land—not an unpredictable question, a fair one, one you might ask about Brown v. Board of

Education, Griswold v. Connecticut, and there is a long list of cases that are considered established law, settled law—when she asked the nominee whether Roe v. Wade—one in that litany of cases—is settled law, instead of answering it directly one way or the other, as Justice Roberts did, in very unequivocal terms—others might have said absolutely not; that would have been a very straightforward answer—what did we hear? He said—this is reminiscent of some comments that were heard earlier—''I think it depends on what one means by the term 'well settled.'''

When Senator DURBIN of Illinois asked the same question, Judge Alito offered the convoluted response: ''It is—if settled means that it can't be reexamined, then that's one thing. If settled means that it is a precedent then that is entitled to respect of stare decisis . . . then it is a precedent that is protected, entitled to respect under the doctrine of stare decisis in that way.''

Imagine giving that answer to Brown v. Board of Education. Imagine giving that answer to the long list of cases we now have as settled law. Now, the answer is, as Justice Roberts said: ''It is settled law''. But what you have here with Judge Alito is this dance going on here, instead of a direct yes or no. A no answer would have been a very honest answer. In fact, I suspect that is what his answer is, but he did not have the courage, in my view, to say that, which I would have respected. I might have disagreed with it, but I would have respected it. That is troublesome to me.

Finally, I think we should vigorously examine the nominee to see whether he or she is capable of and committed to upholding the Constitution of the United States and its promise of freedom and equality for all. Protecting the constitutional rights of all Americans is perhaps the most fundamental duty of a Supreme Court Justice. Therefore, I am deeply concerned in his 1985 memo Judge Alito explained that his interest in constitutional law was ''motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment.''

That is a fairly sophisticated answer in 1985. Many of these decisions, of course, compromise the cornerstone of the Supreme Court's modern jurisprudence, in enforcing the fundamental democratic principle of one person, one vote, in preventing the violation of an individual's privacy by the state—a matter that concerns everybody in this country; we see a lot of it going on today—and in ensuring procedural fairness in criminal trials. To wholeheartedly reject this legacy is also to reject the continued pursuit of the constitutional ideals of liberty and equality, in my view.

Before the Judiciary Committee, Judge Alito defended himself by saying he wrote the comments 20 years ago. Twenty years ago, he was well into his thirties. This is not some 18-year-old who is writing these thoughts. Of course, before becoming a judge, in that case, he was merely outlining the development of his thinking about constitutional law at the time and pledged to keep an ''open mind'' if confirmed to the Supreme Court. Well, that is nice to know. I am glad to hear he is going to have an open mind.

The seven current and former members of the Third Circuit Court of Appeals stated Judge Alito is ''not an ideologue,'' ''has no agenda,'' and ''is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives.'' I think those were certainly worthwhile comments to make, and certainly the comments of his fellow peers on the court I found to be compelling arguments on his behalf. However, I must say, having said all of that—I respect the fact they said it in our hearings—Judge Alito's long record as a Third Circuit judge, particularly in cases involving questions of individual rights, indicates a personal intent on stripping away many of these so-called Warren Court era achievements. In Reynolds v. Simms, for instance, Justice Warren wrote:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Yet, in Jenkins v. Manning, Judge Alito was part of a decision to dismiss a suit brought by African-American voters who argued that the district's voting system diluted the voting strength of minorities. In that case, the dissenters argued that the decision failed to give effect to ''the broad sweep of the Voting Rights Act.''

Judge Alito's long record of opinions and dissents in these, and other divided cases lead me to believe that he has a legal philosophy which lies outside the mainstream. Several newspapers and scholars provided support for this concern. One study conducted by University of Chicago Professor Cass Sunstein, found that when there was a conflict between institutions and individual rights, Judge Alito's dissenting opinions supported the institutional interest over individual rights 84 percent of the time. Moreover, 91 percent of Alito's dissents take positions more conservative than his colleagues—including those appointed by Presidents Bush and Reagan.

Judge Alito has set an incredibly high standard for individuals to meet when bringing a claim against the Government or a Corporation. He has repeatedly dissented in cases where the majority has ruled in favor of an individual alleging racial or gender discrimination. In Bray v. Marriott Hotels, for example, a housekeeper manager alleged that she was denied a promotion because she was black. While the Third Circuit Court of Appeals ruled that the plaintiff had established the essential elements of a case of race discrimination and therefore was entitled to go to trial by a jury, Judge Alito dissented. He argued for a heightened evidentiary burden in order to protect employers who, in the future, would have to choose between—and I quote—''competing candidates of roughly equal qualifications and the candidate who is not hired or promoted claims discrimination.'' The majority again criticized Alito's approach stating that ''Title VII would be eviscerated if our analysis were to halt where the dissent suggests.''

I also fear that if confirmed, Judge Alito may pose a threat to the laws that protected disabled citizens from discrimination. In Nathanson v. Medical College of Pennsylvania the majority held that the plaintiff, a victim disabled by a terrible car accident, should be allowed to present, to the jury, evidence that the college had failed to make reasonable accommodation for her disability. Alito dissented, and again the majority reacted strongly to Alito's analysis: ''few if any Rehabilitation Act cases would survive summary judgment if such an analysis were applied to each handicapped individual's request for accommodations.''

But, I am especially troubled about Judge Alito's dissent in the Third Circuit Case of Chittester v. Department of Community and Economic Development. That case involved an employee who was fired while taking sick leave and who sought to enforce his rights under the Family and Medical Leave Act, which became law in 1993. I was the original author of this law which has enabled more than 50 million workers to take leave for medical reasons or to care for a child or family member. A primary objective of the act is to ensure that both male and female workers have access to leave, and that they were not punished or discriminated against because of their family responsibilities. However, Judge Alito found that the law was not a valid exercise of Congressional power to enforce the Equal Protection Clause. He said:

> Unlike the Equal Protection Clause, which the Family Medical Leave Act is said to enforce, the Family Medical Leave Act does much more than require nondiscriminatory sick leave practices; it creates a substantive entitlement to sick leave.

The decision reflects a proscriptively narrow conception of what ''equal protection'' required. Real equality cannot be achieved, and the very real effects of discrimination cannot be remedied, without meaningful, substantive action. This is precisely why Congress enacted the Family and Medical Leave Act. The Supreme Court recognized this in Nevada Department of Human Resources v. Hibbs. In a 6–3 decision authored by Chief Justice Rehnquist, the Court held that contrary to what Judge Alito said in Chittester, a worker can sue a State employer who fired

him for taking family leave to care for his sick wife. This finding is critical to ensure that workers and their families can continue to take leave without fearing for their job. This right might be jeopardized if Judge Alito is confirmed, as during the hearing Judge Alito continued to reject evidence of discrimination in personal sick leave even though there is compelling evidence in the legislative history of this law.

In these cases, the very judges who talked about our nominee as being fair and not being an ideologue, in their majority opinions had very different things to say about their colleague on some very critical cases on which this Appellate Court Judge reached different opinions, such as I have cited here, as well as in several others that came before that circuit.

I am also concerned about Judge Alito's ruling regarding the Family and Medical Leave Act, which I authored. The Family Medical Leave Act has provided meaningful relief to millions of Americans. Judge Alito would have made significant changes, if not eliminated the law altogether, a great setback, in my view. The Supreme Court strongly overruled his decision.

Finally, I am troubled that the rights of privacy which are so deeply valued by Americans could be eroded by a Justice on the bench who does not appreciate the importance of these issues.

I am alarmed by Judge Alito's unwillingness to explain his previous statements on the unitary executive theory of Presidential power. In a November 2000 speech to the Federalist Society, Judge Alito expressed strong support for the unitary executive theory calling it ''Gospel according to the Office of Legal Counsel'' referring to the position he held in the Reagan Justice Department. Proponents of this theory believe that the Constitution vests in the executive complete control over the administrative and regulatory branches. Judge Alito's failure to shed any light on his professed support for a powerful, unitary executive is troubling. In Hamdi v. Rumsfeld, Justice O'Connor acknowledged that the executive power must have reasonable limits, asserting that ''a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.'' Judge Alito refused to comment on O'Connor's statement, and instead remarked that ''no person is above the law, and that includes the President.'' Unlike Chief Justice Roberts at his confirmation hearing, Judge Alito did not identify an affirmative obligation of the courts to block an executive action if the Executive acts unconstitutionally. Judge Alito' s answer fails to adequately explain in any substantial way, his views on limitations to executive power.

This failure is of particular significance given the current political landscape. President Bush and his lawyers adopted an expansive interpretation in their view of executive power, particularly in relation to the War on Terror and the conflict in Iraq. In fact, President Bush has cited the ''unitary executive'' theory in several recent instances to override congressional provisions he finds objectionable. I am disturbed that the President has claimed, for himself, the authority to overrule the will of the Congress in passing its antitorture legislation—legislation which received the overwhelming support of congressional Members. This undermines the separation of powers and democratic principles. I am further troubled that in the course of the Judiciary Committee hearing, Judge Alito did not adequately distance himself from the current administration's belief that this theory provides justification for the NSA to engage in the warrantless wirewrapping of U.S. citizens in defiance of the Foreign Intelligence Surveillance Act, and for the detention of U.S. citizens accused of being enemy combatants.

Defining permissible boundaries of Presidential power is among the most pressing of today's constitutional questions, and will almost inevitably arrive before the Supreme Court in the years to come. It is for this reason that Judge Alito' s inability to shed light on his past comments and his current beliefs is so significant. These failures call into question whether Judge Alito has sufficiently demonstrated that his jurisprudential philosophy allows for the degree of respect for democratic checks and balances, and the protection of individual rights and freedoms that the Constitution—and the public—demands.

A Supreme Court Justice influences the most critical issues facing this and future generations of Americans. I believe that the Court may now be at a pivotal point in which the future direction of our law is at stake. Judge Alito, if confirmed, will take the seat of Justice Sandra Day O'Connor on the Supreme Court. While all Supreme Court Justices have the same unique obligation—to serve as the ultimate guardians of the Constitution, the rule of law, and the rights and liberties of every individual citizen—Justice O'Connor has long provided a voice of reason and open-mindedness as she has carried out this weighty responsibility. With a moderate temperament and judicial independence, Justice O'Connor has often supplied the deciding vote to protect fundamental American rights and freedoms. We cannot underestimate how much is at stake in filling this critical seat on the Court.

When I spoke on this floor regarding the nomination of Chief Justice John Roberts, I stated that for those of us concerned about keeping America strong, free and just, his confirmation was no easy matter. However, I ultimately concluded that although he was a conservative nominee, Judge Roberts was within the mainstream of judicial thinking—in his judicial philosophy, his respect for precedent and his belief that the Constitution cannot be read as a document frozen in time. While his responses to questions in the Judiciary Committee may not have been as open as I had hoped, I decided that there was sufficient evidence to believe that he would honor and protect the individual rights and freedoms enshrined in our Constitution as the majority of his record showed him to be a persuasive advocate for his clients rather than a radical judge out of the mainstream of judicial thought.

I regret to say that, having reviewed his judicial record and his responses to the committee, I cannot be convinced that Judge Alito falls within the judicial mainstream. His evasiveness in the face of questioning by the committee, his established record on the bench of taking a restrictive view of individual rights, and his inability to explain his past comments on executive power all lead me to harbor significant concern. Determining whether to confirm a nominee to the Supreme Court is never an easy decision. Whether a nominee is sufficiently within the mainstream of judicial thinking is often a question of degree. While Judge Alito is clearly intellectually qualified and legally experienced, I am not convinced that Judge Alito's judicial philosophy will allow for the faithfulness to the constitutional rights and freedoms, and the protection of equality before the law we have come to expect from a Supreme Court Justice.

After a review of Judge Alito's extensive record, his decisions as a judge on the Third Circuit, and his testimony before the Senate Judiciary Committee, I must oppose this nomination. I have concluded that Judge Alito's judicial temperament is out of step with our fundamental constitutional values and that his confirmation would not be in the best interests of the United States.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. So, Mr. President, for the reasons I have stated, I will oppose this nomination. I say this with regret because it will only be the fourth occasion in 25 years I will have voted against a nominee for the Supreme Court. I will do so tomorrow at 11 a.m.

I deeply regret that I didn't have the opportunity to engage in a fuller discussion. It is somewhat disturbing, that I was only allocated 20 minutes. Because of the constraints on time, this is all this Senator can say about a lifetime appointment to a coequal branch of Government, a nominee that will have a huge impact on the course of America in the 21st century.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 1 hour.

Mr. INHOFE. Mr. President, I say to my good friend from Connecticut, I was surprised to find out he was not a member of the conservative caucus. Now I know. But I would agree with him insofar as the significance of the confirmation vote that will take place

tomorrow. There is nothing more solemn, nothing more significant that we have to deal with than confirming judges, whether they are nominated by Democrats or by Republicans.

However, I respectfully disagree with the Senator from Connecticut. I look forward to voting for the successful confirmation of Judge Alito. I have had a chance to talk about him. I believe he will be a strict constructionist and will do a good job for the United States, specifically for my 20 kids and grandkids.

NATIONAL SECURITY

Mr. INHOFE. Mr. President, I am not here, people will be glad to know, to talk about Judge Alito. I am here as an assignment. Serving on the Senate Armed Services Committee, as is the keeper of the chair, I have been there for quite a number of years. I have taken the assignment of giving a grade as to what President Bush, prior to his State of the Union Message tomorrow night, has done in the way of national security and national defense. I am proud to say that I am very proud of the job he has done. In doing this, what I would like to do is break it down into three segments.

First, I want to talk about the problems this President inherited when he became President in terms of our national security; second, the solutions, the very impressive solutions so far to these problems; and third, the challenges he has for the future, for the next 2 or 3 years. In doing this, I know I will come across as being very partisan. Quite frankly, when we are dealing with national defense, I am quite partisan. I think the most important thing we have to do here is to keep America strong, make sure that we have a strong national defense system. I hate to say it, but that becomes a partisan issue. However, it is too serious of an issue to try to be diplomatic, so I will not attempt to be diplomatic tonight. I will be dealing with the truth.

Winston Churchill said: Truth is incontrovertible. Panic may resent it, ignorance may deride it, malice may destroy it, but there it is.

First, in dealing with the problems that he inherited, I would like to outline seven huge problems that this President inherited when he became President. The first is, when he was inaugurated he received a military structure that was in total disarray. During the Clinton administration in the 1990s, I will show you in terms of dollars what happened to our system. There was a euphoric attitude everyone had that somehow the Cold War was over and we did not need a military anymore.

This is what the Clinton administration did. If you take this line right here, this is kind of the baseline only increased by inflation. So by doing this, we would say if that President had taken the baseline, the appropriations that he came in with and just applied the inflationary rate, it would be that top line, the black line. However, he didn't do it. Instead, with his budget, this yellow line is what he requested.

Fortunately, we in Congress were able to get this up to what I see as a green line here. So this is actually what happened right here. This is what was actually appropriated. This would have been a static system. This is what the President wanted.

What does that mean? It means that during the years he was President, he decreased spending from the level where it was by $313 billion. If we had not raised the amount that was in his budget, his budget called for a decrease of $412 billion. We are talking about the difference between the black line and the red line. It means that the Clinton-Gore administration cut the budget by 40 percent, reducing it to the lowest percentage of gross national product since before World War II.

The first 2 years of the Clinton administration, I was in the House of Representatives. I was on the House Armed Services Committee. I knew what he was going to be doing to our military. I started complaining about this during the first 2 years of his administration. Then as I saw it taking place, we were on the floor at least every week or two talking about what this President was doing to our military.

When they say the Cold War is over, we don't need a military anymore, I look wistfully back to the days of the Cold War. During the Cold War, we knew we had one superpower out there. It was the Soviet Union. We knew what they had. They were predictable. Their attitudes were predictable. They represented a great country, the U.S.S.R. We knew pretty much where we were. We had a policy that was in place. It was a military that stood up to an Eastern Bloc type of mentality. It was one that was working quite well.

During the time of the 1990s, during the Clinton drawdown of the military, one particular general comes to mind. I considered him to be a hero because it took courage. It is hard to explain to real people, as I go back to Oklahoma, how much courage it takes for someone to stand up against his own President if he is in the military. These are career people. GEN John Jumper, who later became the Chief of the Air Force, stood up in 1998 or 1999 and said: This insane drawdown of our military is something we cannot continue.

Not only were we drawing down to almost 60 percent, in terms of Army divisions, of our tactical airwings, our ships were coming down from 600 to 300, but also our modernization program.

So General Jumper, with all the credibility that he had—and there is no one in America more credible than he is—was able to say that we have a very serious problem and we now are sending our kids out in strike vehicles where the prospective enemy has better equipment than we do.

People don't realize it. When I go back to Oklahoma, I say: Do you realize some countries make better fighting equipment. For instance, five countries make a better artillery piece than the very best one that we have, which is the Paladin.

John Jumper said: Our best strike vehicles are the F–15 and F–16. The Russians are now making the SU–27, the SU–30s, and are proposing to make the SU–35. Those vehicles are better than the best ones we have in terms of jammers and radar.

I could get more specific in how they were better, but they were better. I agreed with him at the time and said so and applauded him when he made the statement that we need to move on with the FA–22 so we can get back and be competitive again.

People wonder why the liberals and, I say, the Democrats do not support a strong national defense. There are some reasons for this. One of the things we have in this country, which people don't stop and really think through, is the convention system. It is kind of a miracle. In a living room in Broken Arrow, OK, Republicans all meet and they decide what we stand for. We stand for a strong national defense, we are pro-life, all that stuff. At the same time, across the street you have the Democrats meeting. They are talking about gay rights and abortion and all the things they stand for. They decide what delegates go to the county convention. So the most activist of each side, liberals and conservatives, become the people who end up going to the conventions. Then they go to the district convention, the State convention, and then the national convention.

The bottom line is, if any Republican wants to run for the Senate or for the House or for a higher position, that person has to embrace the philosophy, at least partially, that is adopted by his party in the national convention of the Republican Party. It is a conservative agenda. For the Democratic Party, it is liberal agenda. That is a long way around the barn, but it kind of explains as to why these Members of the Senate from the Democratic side are not strong in terms of a national defense.

It is because if you really look at a liberal, they don't think you need a military to start with. Liberals believe that if all countries would stand in a circle and hold hands and unilaterally disarm, all threats would go away. They don't say that, but that is what they really think. So we have these people running for President on the Democratic side, and they don't want to perform in terms of what the needs are from a national security standpoint.

I said at the outset, there are two things unique to America. The other one is, we are so privileged in this country. If people at home want to know how JIM INHOFE, as a Member of

the Senate, or any other Republican or Democratic Member of the Senate or House is voting, they can find out because we are ranked and rated on a daily basis. If you are back home and wondering what your Member of Congress is doing and somehow your concern is taxes, the National Taxpayers Union ranks all of us in terms of what we do and what we feel in terms of taxes. If we want to increase taxes or decrease taxes, they know.

They don't have to listen to us because, unfortunately, a lot of the Members of the Senate and the House go back home and lie to the people. They tell them they are for reducing taxes when, in fact, they vote to increase taxes.

If you are concerned about whether you are a conservative, then the American Conservative Union ranks every Member of the Senate, every Member of the House in terms of whether they are conservative or liberal. I bring that up because they happen to have me as the most conservative Member this last year. I was very proud of that ranking.

If you are concerned and you are back in Sapulpa, OK, wondering which Members are voting for a more favorable climate for small business, the National Federation of Independent Business ranks each one of us as to what our attitude is insofar as business issues.

I say that because if you want to know how we are voting on national security issues or on national defense issues, the Center for Security Policy is a ranking organization that ranks each one of us. I could name 30 or 40 of them. Ratification of the Comprehensive Test Ban Treaty, confirmation of John Bolton, missile defense filibuster, the American Missile Protection Act—these are all things that have to do with defending America. This is significant and people need to know it. The way we are ranked in accordance with how we vote for national defense issues, the most recent report shows that the Republicans voted in favor of national security 82 percent of the time. The Democrats voted prosecurity and prodefense 21 percent of the time. That tells you why defending America is a partisan issue.

We all know what happened during the hollow force that followed the Carter administration. We saw what Reagan had to do to rebuild our defenses. He did it. Now we have a situation where we are going through essentially the same thing. The Bush administration inherited the Clinton military and had to start building on it. That is a serious problem, but he has done a good job.

I said there are seven things that this President inherited. The second thing is an economy that was set up to fall. We all know now that we went into the recession in March of 2000. That was prior to the time that President Bush came into office. So he inherited this recession. People have asked: What does that have to do with national security? What does that have to do with national defense? It has a lot to do with it because each 1 percent of increase in economic activity translates to $46 billion in new revenue. So if we are 5 or 6 percent down during a recession, that is money that the President can't spend.

I often say to my conservative friends when I go back to Oklahoma and they are complaining about the deficit—and you hear the ranting and raving from this side that Republicans are responsible for it—they have to realize that this President not only inherited a military that had to be built up, he also inherited an economy that was down in the cellar and, of course, he had to prosecute a war. That is a serious problem. That is the second thing this President inherited.

The third thing this President inherited were the international challenges that have become threatening to this country. In Iraq, the failure of the Oil-for-Food Program, we all know about that. We know about Saddam Hussein taking the money and using it for other purposes and denying the weapons inspectors access to the country, as he had agreed to do. All these things were happening in Iraq. Sometimes I look at the way people were trying to—I don't think they are trying anymore—talk about weapons of mass destruction. That wasn't the real issue at the time. When you stop and realize, if we hadn't gone in and done what we did to Saddam Hussein, we would have more of what we had for the 12 years, between the first and the second Persian Gulf wars.

Let me explain that a little bit. The first freedom fight came in 1991, after the first Persian Gulf war. I was one of nine people selected to go on the first freedom fight. Alexander Hague went, and a Democrat, Tony Cohelo, went. We had one person I will not mention. We had a prominent Kuwaiti citizen, one of nobility, and his 7-year-old daughter. All they could talk about was they wanted to go back and see what their home looked like after the demise took place in the first Persian Gulf war. We found that their home—this was the day after the war was over. At that time, the Iraqis didn't even know the war was over. They were still burning the oilfields. We went to their home on the Persian Gulf, which was a beautiful palace, only to find that—the individual and his daughter who were with us on this first freedom fight found out that Saddam Hussein had used that particular house for a headquarters. I took the 7-year-old girl up to her room—she wanted to see her animals—only to find that her bedroom was used as a torture chamber. There were ears and body parts scattered about the place. Twelve years following that, one of the bloodiest regimes took place, with the torturing of individuals. They were shredding people, and they would beg to be put into the shredder head first to avoid the pain. It was the same with vats of acid. Babies were taken from their mothers; they were taken by their arms and banged against a brick wall until they were dead. This happened for a long period of time. And people think the only reason to go in there was for weapons of mass destruction.

There is something kind of interesting happening right now that I don't think even the Presiding Officer is aware of, and that is there is an individual I met in my office in Oklahoma, a former general in the Iraqi Army. He was an air general of the Air Force in Iraq, Georges Sada. There is a book he has written, which is out today, called ''Sadam's Secrets.'' He witnessed what they did with the weapons of mass destruction. They took them and put them into various aircraft and took them across the Syrian border. It is all in this book. He was on ''Hannity and Colmes'' about 4 days ago. Watch for this guy, Georges Sada. He will let you know that there were weapons of mass destruction. We knew that anyway because he used them on some 200,000 people that he was able to painfully kill using chemical weapons.

But I say that not because we have now solved the mystery of the weapons of mass destruction because that never was important. What was important was the things we knew when we went into Iraq.

Let me tell you the most significant thing and the greatest victory that we could not talk about at that time, which was the three major terrorist training camps that were located in Iraq—Samarra, Ramadi, and Salman Pak. We broke those as soon as we brought down Saddam Hussein.

I said there were seven things the President inherited—a downgraded military, a broken economy, and one was the national security challenge. The fourth one is international terrorism. We had with bin Laden—and during the Clinton administration we remember a lot of things that did happen. We had the 1993 car bomb that went off in the basement of the World Trade Center. We saw, in 1996, Khobar Towers blow up. We remember the embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, that were blown up in 1998. We remember, of course, the USS *Cole* in Yemen, when a little boat floated up and killed a bunch of our sailors. The Clinton response was comparatively benign, restrained and, at best, inconsistent. The operation ''Infinite Reach'' included cruise missile strikes against Afghanistan and Sudan, which were not the problem. But that was during the Lewinsky scandal, so nobody paid much attention to that.

The fifth thing was the proliferation of weapons of mass destruction. This is something we saw. When the Soviet Union fell, when the vast nuclear stockpile kind of disappeared—we had people going up there, including brokers—and then we could only identify some 30 or 40 percent of that which was stolen from the massive stockpile that

the Soviets had put together. That means there is about 60 to 70 percent of the stolen stockpile out there, and we are not sure where that is.

During this time, AQ Khan, the father of Pakistan's nuclear program, began an international network of clandestine nuclear proliferation to Libya, Iran, and North Korea.

I remember one thing that happened because I was in this body at that time and a member of the Armed Services Committee. I was trying to get the point across that even though President Clinton's staff had said we don't have a problem in terms of North Korea, I asked the question—I wrote a letter to the Clinton administration on August 24, of 1998 and I asked the question: How long will it be until North Korea has multiple-stage rockets that could send a missile that could reach the United States. I got a reply back, but it wasn't in writing—they didn't want to put it in writing. They said it would be 5 to 10 years before they will have that capability. Seven days later, on August 31 in 1998, the North Koreans fired a multiple-stage rocket with the capability of reaching America. In fact, it did reach some areas of Alaska; that is America.

We have gone through the weapons of mass destruction proliferation, and we didn't have a strong response to that. The strongest response we had back during the problem with Somalia and Mogadishu—you might remember that tragedy—we bailed out, ''cut and run,'' which is a favorite thing for liberals to do when crises appear.

The sixth huge problem that the President inherited was an intelligence breakdown. It had been broken for a long time. I could not blame Democrats for that. When I was elected in 1994 from the House to the Senate, I replaced David Boren. Senator Boren had been chairman of the Senate Intelligence Committee for quite some time. After I was elected in that special election, he said we need to sit down and talk about our intelligence system. So we did. He talked about turf battles, that we have the CIA, FBI, NSA, and DIA, and none of them were cooperating or coordinating with one another. I said I will get on the Intelligence Committee, which I did, only to find out what David Boren told me was exactly the situation. We tried to correct it, and we were not successful, the same as he was not successful prior to 1994.

I remember once going down to the NSA in Virginia and they were showing me, at that time, a new listening device that could listen to somebody through 2 feet of concrete. I said: That is great; it is what they need in New York City right now. The FBI has a need for this type of technology. They said: This is ours, they cannot have it. That is the type of situation we had. It was something that had been that way for a long period of time. Nonetheless, the President did inherit that.

The last thing that falls into the class of the huge inherited problems by this President is the problem of China, and I was critical about this on the Senate floor. I stood here at this podium and said at the time that the first thing Clinton-Gore did when they assumed office was go to our energy labs and start tearing down the security system. They did away with color-coded badges. We remember that. Everybody knew that. Do you know why? They said: This is demeaning for someone who has a color that designates a lower form of security. We want everybody to be the same. Then they did away with background checks and with the FBI wiretapping, and as a result of that—remember Wen Ho Lee who ended up taking to China everything we had from our energy labs? We lost at that time to China our W–88 warhead capability. This was a crown jewel; this was the device that would allow us to have nuclear capability where we could attach 10 nuclear missiles to a single warhead. We lost that and the Chinese got that.

Remember what happened with the Loral Corporation? At that time, we had a system the Loral Corporation had that was a guidance technology that we were using in this country. However, they were precluded from sending it to other countries because this was something we didn't want anybody else to have. In order to send this to China, the President, Bill Clinton, had to sign a waiver, and he signed a waiver so Loral could sell guidance technology to the Chinese so they would be more accurate in their efforts to use their missiles. I am sure it was not related at all to the fact that Bernard Schwartz, the head of Loral Corporation, was their largest single financial contributor. Now they are talking about how terrible this thing is with this guy that was contributing to both Democrats and Republicans and, yet, that wasn't half as bad as what happened during the time that President Clinton signed a waiver so the Chinese would have our guidance technology.

Tomorrow night is going to be the State of the Union Message. I sat in the House Chamber and watched the second or third one that President Clinton had. He made the statement—and it was documented that at the time he made the statement the Chinese had between 13 and 18 of our cities targeted, and he stood up and said: Not one missile is pointed at one American child tonight, not one. Everybody applauded, but at that time between 13 and 18 of our cities were targeted by the Chinese.

So we have had a problem that is a very serious one and one that the President had to deal with. Of course, we knew the Chinese were transferring the prohibited weapons technology to Pakistan, Iraq, Iran, Syria, and North Korea and other countries. That is the ninth thing the President inherited. That is the real serious problem. Yet if we look at this chart again, the President had the lowest, in terms of percentage of gross national product, since before World War II.

This President came in, and the first thing the Bush administration tried to do is rebuild this broken military system. This is what President Bush did. I was so proud of him for doing it. You saw the other one, where you take the static line up there and it looked like a bathtub, where Clinton was $400 billion below, down here, just a static increase that would go with the inflationary rate. This is what the Bush administration did. If you take that black line, instead of being below that, they proposed, and the Senate and House agreed, to increase it during that period of time. That is up now, and that is 5 years. So it is $334 billion more than the static inflation-rate increase—not $400 billion less, as it was in the Clinton administration. Now, if you take, in addition to that, the emergency supplementals that went to military, that is another $292 billion. Add that together, and it is $626 billion more. That is a lot of money.

It is hard for me, as a conservative, to stand here and brag about the fact that we are spending more on the military, but we had to in order to strengthen our programs and build up our troop strength and our modernization program. Bush went in and he did a lot of other things, too. He helped the troops by increasing salaries and their housing allowances. Prior to this time, they were having to spend 15 percent of their housing out of their own pockets. He took care of that for them. He increased their capabilities and readiness, the growth in the language training and funding of intelligence, and we have seen an increase in lethality across all forces by focusing much more on precision instruments.

If I could, I will go through our different services and make some comments as to what this President did when he inherited this broken defense system.

In the Army, he moved it from the old system of dealing with divisions and organized them into modular brigades, combat teams that are much more capable and much faster to be deployed. These are ongoing plans to increase our force size from 33 brigades to 42 brigades to build back up what came down in the nineties.

Because of this reorganization, about 75 percent of the Army's brigade structure should always be ready, and with the increase for the Special Ops, for the Psych Ops, for the military police, and for the logistic units, he has done a remarkable job.

The rotation of units is kind of interesting, and I will get to that in a minute.

In looking at the Navy, the biggest problem he inherited there was spare parts. None of our ships would float. He concentrated on spare parts, and he now has the ships so they are out and ready and are actually out in areas that could be combat areas.

One of the changes he made was, instead of bringing it all the way back to

the United States and changing the crews, he leaves the ship in the battle area and flies the crew back and puts a new crew in. As a result, the percentage of ships routinely at sea has increased by more than 50 percent.

In the Air Force, the modernization program—we are back with the Joint Strike Fighter working for that, and we actually have our FA–22. It is flying. We have increased that fleet. We are actually going to be ahead of the other countries.

Keep in mind—I talked about China a minute ago—back during the time the Russians were selling the SU–27s which are better than our F–15s and F–16s, in one purchase, the Chinese purchased 240 of those. We have a long way to get back.

One of the things the President did in the Air Force was recognize our ALCs, air logistic centers, and start funding them again so we can maintain and rebuild our aging aircraft fleet. We now have three ALCs. They are located in Utah, Georgia, and Oklahoma.

It is amazing what they have done. The rate of aircraft grounded due to parts issues decreased by 37 percent, it has bettered our flying goal of 922,000 hours, the rate of aircraft incidents due to parts issues has decreased by 23 percent, and logistics response time has increased by 20 percent. Good things are happening, and we see tangible results.

On force posturing, this is something the President did, and I am very proud I had something to do with this. It occurred to me as a member of the Senate Armed Services Committee that we have all these families deployed in Western Europe and South Korea, and yet, as chairman of the Environment and Public Works Committee, I know what some of the far-left environmentalists are doing to our ability to have live ranges.

In Europe, that same thing was happening. So our families with our soldiers training over there could only train on live ranges, sometimes 5 days a week, sometimes 3 days a week, only during daylight hours, and the restrictions were so cumbersome that we were not able to train these guys.

It just made sense, if we tried something totally different and changed our force structure, instead of having them in Western Europe where they cannot train, put them in Eastern Europe. I went to Bulgaria and Romania and a number of places where they have training ranges that they will allow us to use free of charge. They will even billet us while we are there.

In changing our structure, we will bring all the families back. Instead of having 2-, 3-, 4-year deployments with the families going over to Western Europe, we will have 2- and 3-month deployments and not send the families, just the troops over to the eastern areas, and they can get as much training in 3 months as they could before this in 3 years. That is one of the major changes. Right now, we are in the process of bringing back 70,000 troops, and 100,000 family members are coming back. It is a major improvement.

That is how Bush responded to the national security threats. He did it swiftly and decisively. After taking office, he was faced with a couple of crises. The first one was not quite as severe, but it was serious. That was back when the Chinese shot down one of our EP–3 Navy surveillance planes, and he was able to, because of the decisive action he took, bring the plane back and the crew and no one was hurt.

Then along came the tragedy of all tragedies, 9/11. I thought: Boy, am I glad we have somebody in there who is decisive and can respond. The World Trade Center and the Pentagon got hit. If it had not been for the courageous bunch of people over Pennsylvania, very likely this building, where I am speaking right now, would have been one of the targets and one of the victims. That is what we are dealing with and the changes that were made.

The third part is policy change. I am going to run through this quickly, but I would like to have people think about this. The President changed the policy, and I think we can pretty much take his rhetoric that he has lived up to and see how different this is from the decade of the nineties.

The President said: You are either with us or against us. That is what the President said to other countries. If you are not with us, you are an enemy. He said that Americans are asking how will we fight to win this war:

> We will direct every resource at our command, every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every necessary weapon of war to the disruption and defeat of the global war on terror network.

The President went further to say we are going to do four things. He said we are determined to prevent the attacks of terrorist networks before they occur.

Second, we are determined to deny weapons of mass destruction to outlaw regimes and to their terrorist allies who will use them.

Third, we are determined to deny radical groups the support and sanctuary of outlaw regimes.

Fourth, we are determined to deny militants control of any nation.

Within weeks of 9/11, he sent the military to Afghanistan to remove the Taliban. Operation Enduring Freedom was successful.

He asked Congress for the PATRIOT Act.

He established the Department of Homeland Security.

He formed the 9/11 Commission. The 9/11 Commission had 39 recommendations, of which we adopted 37.

He launched a preemptive attack against Saddam Hussein, and that worked successively. That was Operation Iraqi Freedom.

He established the National Counterterrorism Center, which is now up and running.

He established a Domestic Nuclear Detection Office where just one single Federal agency is in charge so these things don't get lost in a barrage of bureaucracies.

He established the Terrorist Screening Center.

He established and transformed the FBI to focus on preventing terrorism.

He strengthened the Transportation Safety Administration.

He improved border screening and security through the US–VISIT entry-exit system.

For the first time, he started looking at our problems with regard to cargo coming into this country. He set up the National Targeting Center, which is responsible for that.

He expanded shipping security through the Container Security Initiative, which worked successfully.

He developed Project Bioshield. This is an organized defense against chemical weapons and biological weapons, as well as nuclear attacks.

He aggressively cracked down on terrorist financing with many international partners. Over 400 individuals and entities have been designated pursuant to the Executive order, resulting in nearly $150 million in frozen assets and millions more blocked so they cannot get to the terrorist activities.

The international successes he has had are incredible. We are safer today.

Mr. President, 9/11 was a wake-up call. We are doing the right things.

Another measure of success is Iraq. You would never know it, listening to the media. The first thing the troops ask me when I go over there is, Why doesn't the media like us? Why don't they understand what we are doing? I think now they are catching on that the American people are aware of our success.

They have had three successful nationwide elections. They voted for a transitional government and drafted the most progressive democratic constitution in the Arab world, approved a new constitution, elected a new government under a new constitution, with each election less violent, with a bigger turnout than the one before.

The Sunnis, the ones who were not cooperating, are now cooperating. There was an article about a week ago in the Los Angeles Times that talked about the killing by a suicide bomber of literally hundreds of Iraqi troops, and most were Sunnis, and 225 Sunni families each offered another member of their family to replace those who had been killed. That is Iraq.

Still, there are international successes with terrorism. The terrorists who attacked on 9/11 are in jail, dead, or on the run. They are isolated. Al-Qaida and bin Laden no longer have a safe haven in which to hide. The Taliban is deposed, and democracy is in its place.

The al-Qaida structure has been taken out. No major attacks on the United States have taken place since all this took place. We have had the

disruption of at least 10 serious al-Qaida terrorist plots since 9/11. Three of those plots, incidentally, were plots to do something to the United States of America within the confines of our borders.

We had the proliferation of weapons of mass destruction that was taking place during the nineties and the AQ Khan network in Pakistan. They are no longer distributing weapons of mass destruction or information about them.

There are now six-party talks ongoing with North Korea, and the United States is no longer alone in pressuring the North Koreans to give up their nuclear programs.

Libya opened its doors to inspection. This is really critical because Libya, during the Clinton administration of the nineties, was building weapons of mass destruction, their unconventional weapons program. I can't help but think they equate President Bush with President Reagan because we remember and they remember, certainly, what happened in 1986 when President Reagan sent about F–111s into Libya and pounded them into the ground. All of a sudden, Libya opened their doors to our inspectors, and they have admitted the country had sought to develop unconventional weapons, but now they are eliminating them.

In missile defense, this is significant because since 1983 when the SDI program started and people were deriding it—the liberals didn't want us to be able to defend ourselves against incoming missile attacks. We now have the beginning of one coming in place. We can now knock down incoming missiles into the United States. That is huge. Not many people are aware of it, but that is what is happening.

We talked about the problems he inherited and about the solutions. How much further do we have to go? In the State of the Union Message tomorrow night, we are going to hear the President talk about Iraq and about some of the things we need to continue in Iraq, the successes we have had, but also the international community, the fact they are going to have to come up with what they agreed to. They agreed to supply $13 billion toward the war in Iraq. They have not done it yet. I think he is going to invite them to do it tomorrow night.

The Iran problem, with the President of Iran declaring Israel must be wiped off the map and the Holocaust was actually a myth—a far more serious issue is Iran's attempt to restart their nuclear program. Against the International Atomic Energy Agency directive, on January 10, Iran reopened Natanz nuclear complex. That is a serious problem.

Mexico and the borders—we have talked about that and recognize it is a serious problem.

The NSA eavesdropping—I think the President will talk about that. Everyone is concerned about people's feelings being hurt and not about the intervention of the President to eavesdrop and try to get information from known terrorist groups coming into this country and trying to communicate with terrorists within the country. I am really proud of this President for sticking to his guns on this issue. We need to keep that going. I am sure he will mention something about that tomorrow night.

China—I am sure he will talk about the problems with China. I have to say this: As a member of the Armed Services Committee, during the nineties, during the Clinton administration, I watched the dismantling of our system. At the time, we were going down to about 60 percent of what we had at the end of the Persian Gulf war, and at that time, China had increased its military procurement by 1,000 percent. That is bad enough, and that is serious, but the other thing they are doing, their problem with us is we are the No. 1 and No. 2 country in terms of having to depend on other countries to have the energy to run our country and certainly to fight a war.

When we do this, I see China out there all of a sudden has its $70 billion deal with Iran, and now they are importing 13 percent of their oil from Iran. They are refusing to go along with us on sanctions against the Sudan with all the atrocities going on there. Now they are importing 70 percent of their oil from Sudan. We know what they have been doing with Chavez in Venezuela.

These are real serious problems we are facing with China. I am sure he will talk about these tomorrow night.

He will talk about our overreliance on foreign oil. I cannot be critical of the Democrats or Republicans. We are all responsible for that.

Back when Don Hodel was Secretary of Interior during the Reagan administration, we had a little song and dance where we would go out to the consumption States, such as New York and Illinois, and we would tell them that our reliance on foreign countries for energy is really not an energy issue, it is a national security issue because we are relying on them for our ability to fight a war. Do you know what our reliance was at that time? We were relying on foreign countries for 35 percent of our total amount of oil imports, oil to run our country. Now it is at 63 percent. That is serious.

I have to say in conclusion I believe the President deserves excellent grades. What this administration accomplished in the last 5 years is phenomenal. If we compare where we were and where we are now, we are a more secure nation. We have finally awakened and we have started to deal aggressively with the threats that are facing us. We are no longer treating the terrorist enemies of the United States like disadvantaged people. We are no longer turning a blind eye to the nuclear proliferation by negotiating without the real threat of military action. Our negotiators can now go to the table with more credibility.

We are no long underfunding the readiness challenge. If we had an administration without the willingness to fund defense, take decisive action and stand up to our allies with their heads buried in the sand, we would be in far worse shape than we are today. I believe Europe is slowly awakening to the threats that exist. Fortunately we have had one very strong ally who stayed with us through this challenging period, Tony Blair. I am sure the President will renew his praise for Tony Blair and all the help he has given to us.

I wish to say one thing. Let me ask the Chair how much time I have remaining?

The PRESIDING OFFICER (Mr. TALENT). The Senator has approximately 14 minutes remaining.

Mr. INHOFE. Let me make a comment about this thing, ''The U.S. Military Under Strain and at Risk.'' It is amazing that the media would give any attention to this group. Do you know who this group is? This group is Madeleine Albright, Burger—this is the group, Podesta—these are the ones who gave us the problems we had in the 1990s and so they came with a report and say the military is under strain, at risk.

We are undoing the damage they did. The far-left Democrat club that gave us the broken force of the 1990s is the one in charge of this report. If you watch TV, you would think they are actually people who are seriously concerned about the United States of America and concerned about undoing the damage that has been done there when they in fact were the ones who caused damage. The Chief of Staff of the Army, General Schoomacker is a good guy. He came out of retirement and agreed to do this. He didn't have to do it. He is not one of the guys who had to do it for a job. He is retired. He is down on a ranch. He agreed to come in and become the commander of the Army, and he read this report and said there is no truth to it. Our Army is not broken. We are actually going through modernization challenges, but it is trying to modernize, modularize, and mobilize, and fight a global war at the same time.

The accusations that were made, let's look at one of them in particular. It says:

> Nearly all of the available combat units in the U.S. Army National Guard and Marine Corps have been used in the current operations.

That is true because we started with a force that was underfunded and had been drawn down during the 1980s by the very people who came out with this report. They didn't have the right kind of a mix. So we are changing that and taking it away from the Cold War military to one that is facing this asymmetric threat we have out there. We are currently raising the number of our brigades from 33 to 42. Congress has given us now, through the leadership of the President, authorization for 30,000 more troops.

The shortfall, that was their fault. Again, you can go in and read more of this report saying the Army is experiencing the beginnings of what could become a major recruiting crisis. Right now we are raising our number within the Army from 484,000 to 512,000 and, while we are doing that, our recruiting and our retention is very good. Right now the Active Force retention and recruiting figures combined for 2005 were 99.1 percent. It may not be growing as fast as we would like toward the 512,000, but we can hardly call that a failure. In the first quarter of fiscal year 2006, we achieved 104 percent of the recruiting mission and 100 percent of the retention mission for the quarter.

The Guard and Reserve are all overworked, but in the first quarter, recruiting figures for the National Guard are 106 percent and the Reserves are doing even better at 122 percent. General Fuzzy Webster, who came back with the Third Infantry Division—that was their second rotation—they now have a 133-percent retention. That is the third ID that has been over there fighting for freedom on two different occasions.

Anyway, the surprising thing is the press would give them any attention at all.

Last, let me share my own personal experience. I have had occasion to go to Iraq or the Iraq area 10 times now. I take very seriously my job as a member of the Senate Armed Services Committee. Let me share with you, not all 10 times but a little anecdotal experience on 3 of those times.

First, in January, January is the first vote. I remember one lady—I had an interpreter and we were interviewing—and she said I couldn't see the ballot because of the tears in my eyes. Then it occurred to me, this is not the first time in the 30 years of the butcher Saddam Hussein, this is the first time in 7,000 years we have had an opportunity at self-determination.

A few days later I decide to spend my time in the Sunni triangle because that is where they are supposed to hate us the most. There is a general in Fallujah by the name of Mahdi, the brigade commander for Saddam Hussein, the brigade commander for the Iraqi security forces in Fallujah. At that time he hated Americans, until they started training with the Marines in Fallujah, called embedded training. They became so fond of the Marines, when they rotated the Marines out we all got together and we cried. He renamed Fallujah Iraqi security force the Fallujah marines. That man is now in charge of security in Baghdad because he is doing security for us. In Tikrit, I was there when they blew up one of the training centers where 40 Iraqis were seriously injured. What you don't see in the media is the 40 families who had that loss replaced their loved ones with another member of the family.

When you go across the Sunni triangle 50 or 100 feet off the ground in a helicopter, little kids are waving American flags. When we send care packages to our kids, cookies or candies, they don't eat them, they repackage them and throw them to the kids there. That is the truth of what was happening.

I was up there last month during the election. Everybody expected the problems of the terrorists, the insurgents, to spike at that time, but it didn't happen because they have run out of steam. The IEDs, they went down by 30 percent in the month before the December election. Suicide bombs went down by 70 percent in 90 days. The road from the airport that goes into the green zone, I have been on it many times, they were having about 10 terrorist activities each week and now there have not been any for 7 months. Not one. That is when we turned over the security to the Iraqis and they are taking care of their own security.

These are the successes that are taking place. The number of tips that come in from Iraqis, they used to be 500 a month, now they are up to 5,000 a month. This is what is happening.

When we see that this general is now in Baghdad, and more than the eastern half of Baghdad, there is not one American boot on the ground, they are all Iraqis. They are the ones taking care of their own security and the 112 battalions they have right now, approximately 220,000 troops, 32 of those 112 battalions are either level 1 or level 2; that is, they can go into battle on their own. In January a year ago none were in that position.

Is it going to be over? People are always asking that question. People are not answering. I will answer that question. If you take the trend where we are right now, right now we have trained and equipped 220,000 Iraqi troops. By the end of this year it will be 300,000 Iraqi troops. The goal was to get up to 325,000. Why? Because all the military people tell me we need to get to 10 divisions before we can turn the security of Iraq over to the Iraqis, and that will be 325,000. We will be there by June of 2007. By June of 2007 we will have turned over the security to the Iraqis. We will still have a few troops there—we still have troops in Bosnia and Kosovo—but the security will have been turned over to them.

When you go through the towns and see the hospitals, the schools, the businesses—$22 billion in oil reserves are going in. Yet you have several Senators coming back, Senators who, I might add, are running for President in 2008, trying to make you think things are not successful there. Senator BIDEN came back and said they only had 30,000 troops. It was not 30,000, it was 200,000 when he made that statement. Senator KERRY said our troops are out at night terrorizing women. I talked to the troops. None of them even know what he is talking about.

I have to conclude, and I say this in all sincerity to the authors of this report and to the 1990s crowd that got us into this mess, and I say to the naysayers, and I say to the cut-and-run caucus, I have named them—I say to the hand wringers: I am sure glad you are not in charge because, if you were, what happened to the military and national security in the 1990s would be happening again right now. We would be right back to the same path where surrender is always an option. Back where? Negotiating with terrorists. There is nothing wrong with that. Negotiate and appease, negotiate and appease. I thank God every day our President, George Bush, is not an appeaser. An appeaser is a guy who throws his friends to the alligators hoping they will eat them last.

Hiram Mann said:

No man survives when freedom fails.
The best men rot in filthy jails.
And those who cry appease, appease,
are hanged by those they tried to please.

Back in 2000 we came within six electoral votes of being hanged by those we tried to please.

Looking at what this President has done, grading the President on national defense and national security, very clearly President Bush—I am anxious to hear him tomorrow night—very clearly he will get an A.

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. without objection, it is so ordered.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Jason Gage is a 29 year old gay man. On March 12, 2005, he was beaten and stabbed with a piece of glass at his Waterloo, IA, apartment. According to reports, the attacker later told his girlfriend that he assaulted Gage after he made sexual advances toward him.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO FORMER SENATOR WILLIAM PROXMIRE

Mr. SESSIONS. Mr. President, I rise today to pay tribute to our late colleague, Senator William Proxmire—beloved father, husband, veteran, and former member of this body. With over 32 years of service in this institution, Senator Proxmire constantly challenged us to remain fiscally responsible. As chairman of the Committee on Banking, Housing, and Urban Affairs for four Congresses, he was constantly working to protect the taxpayers.

Most Members of this esteemed body recall the steady reminder by Senator Proxmire that ''Uncle Sam is the last of the big spenders.'' His firm advocacy for good sense and forethought on spending led to the creation of the ''Golden Fleece'' awards. Senator Proxmire would hand these awards out, to friend and foe, to highlight government waste, abuse and scandal. His ''maverick'' attitude toward our responsibilities with the taxpayers' dollars should be remembered, honored, and, as I am sure he would agree, employed more today. We miss Senator Proxmire and his ''Golden Fleece'' awards.

Our country lost Senator Proxmire this past December as he succumbed to the devastating affects of Alzheimer's—a disease he battled daily since 1994. He spent his last years at the Copper Ridge Institute in Eldersburg, MD. Copper Ridge is a fantastic facility dedicated to the study of caring for those suffering from dementia. The goals of the Copper Ridge Institute are to share the knowledge it has acquired in the field of dementia care. For the last 10 years, staff from Copper Ridge, the Copper Ridge Institute and the Johns Hopkins University School of Medicine have worked together to develop a model of care that respects the dignity of the people battling this disease and that provides a better quality of life to them.

I had the pleasure of meeting and talking with Senator Proxmire's wife, Ellen, in September 2004. Mrs. Proxmire sponsors an annual award in the name of her husband for those who support this dedicated Alzheimer's research. Mrs. Proxmire has truly become the voice for those who cannot speak. She has worked diligently to see more national attention given to Alzheimer's disease and the important role specific care models like that at Copper Ridge play in preserving the dignity and quality of life of those with the disease. As Mrs. Proxmire likes to point out, ''Until there is a cure for the disease, learning to care for those with Alzheimer's is paramount.''

Mr. President, we have a responsibility, as nearly 4.5 million Americans find themselves faced with this terrible disease, to work with those involved with research and medicine in this field. Our country is stronger today because the name ''William Proxmire'' is found on the rolls of the Senate. As we pause to remember this great man, true patriot, and fellow Senator, this institution should take heed and continue our support in the fight for an Alzheimer's cure.

PALESTINIAN LEGISLATIVE COUNCIL ELECTIONS

Mr. FEINGOLD. Mr. President, while we are still awaiting final certification of the election results, it is apparent that the Islamic Resistance Movement, or Hamas, has obtained a significant number of seats in the new Palestinian legislative council. Despite its electoral success, Hamas remains a terrorist organization that has refused to renounce its fundamental commitment to the destruction of Israel and to the use of violence to achieve its goals.

Electoral results do not change the fact that a lasting, viable peace can only be obtained through a two-state solution. Hamas must use its electoral success as an opportunity to renounce its violent platform and to join in a coalition dedicated to achieving peace in the region. Renouncing terrorism and violence and accepting the right of Israel to exist are essential steps toward fulfilling the desire of the Palestinian people for a peaceful representative democracy.

NATIONAL MENTORING MONTH

Mr. GRASSLEY. Mr. President, I am pleased to join my colleagues Senator MCCAIN and Senator KENNEDY in sponsoring a resolution designating the month of January as ''National Mentoring Month.'' Adult-to-youth mentoring has long shown positive impacts on our Nation's young people in becoming responsible, productive adults.

This January will mark the fourth anniversary of the National Mentoring Month campaign to focus national attention on the need for mentors, as well as how each of us within the public and private sector can work together to increase the number of mentors and assure brighter futures for our youth.

Currently, it is estimated that 15 million children need or want a mentor. That is 15 million young people who need the guidance to improve life-essential skills, make healthy choices, and increase their own self worth. I hope the rest of the Senate will join in supporting this resolution and supporting this very important campaign.

ABRAMOFF SCANDAL

Mr. JOHNSON. Mr. President, as both vice chairman of the Senate Ethics Committee and a member of the Senate Committee on Indian Affairs, I have been absolutely appalled at the scope and the depth of the villainy associated with the Abramoff lobbying scandal.

Inasmuch as Washington recently has become consumed and distracted by the utterly shameful actions of disgraced lobbyist Jack Abramoff, I believe that it is essential to understand just how far removed from this scandal Indian tribes are. While a small handful of tribes were represented by Mr. Abramoff and were victimized by his incredibly shady and cynical manipulation of their funds, the vast majority of our Nation's 560 tribes and Alaskan Native villages had nothing to do with him or his practices. Less than half of those tribes operate casinos, and only a tiny proportion of those generate the kind of money that would attract the likes of Mr. Abramoff.

Most of the tribes that operate casinos are far from wealthy. The myth that all or most gaming Indian tribes are rolling in dough is wildly incorrect. The tribes in South Dakota and many around the country have large land bases and extensive enrolled memberships. Their casinos are often located in remote, rural areas far away from large numbers of affluent customers and set amidst dire levels of poverty and unemployment. The truth is that most of these casinos provide some badly needed jobs and only a modest amount of revenue. The income that remains after payroll expenses are largely then immediately consumed by a huge backlog of financial needs for education, housing, health and economic development within their reservations.

While a few Indian tribes were associated with Mr. Abramoff, the fees they paid were far beyond what most tribes could possibly afford—and in the end, their hired lobbyist abused both their money and their trust. Clearly, this scandal was a lobbying scandal, not a tribal scandal. The reality in too much of Indian Country is the consequence of chronic poverty: shocking levels of disease, inadequate housing, crime, drug and alcohol abuse, low school graduation rates, hunger, and stressed families. These tribes aren't paying Washington lobbyists millions of dollars, but instead are struggling every day to make ends meet and to help restore the dignity of their members.

While I did not receive any money from Jack Abramoff, I did receive legal contributions from tribes he represented. I am proud of the support Indian tribes and individual Native Americans have extended to me over the years. We must help restore the American public's faith in good, responsible government and preserve participation by sovereign Indian tribes in our democracy.

ADDITIONAL STATEMENTS

CONGRATULATING EAGLE SCOUTS

• Mr. THUNE. Mr. President, today I rise to congratulate Seth Honerman, Robert Viste, Kevin and Kyle Roades, Dennis VerHey, Donald Nordlie, Adam English, Michael King, Jordan Richter, Bayard Carlson, Ryan King, Thomas Hieber, Jeffrey Wilkes, and Travis

Maholovich who have recently obtained the rank of Eagle Scout. The rank of Eagle Scout is the highest rank given to lifetime members of the Boy Scouts. This honor is not given lightly, and it represents their great drive and dedication to excellence.

These young men should be proud of their accomplishment. The rank of Eagle is given to only 2 percent of all Boy Scouts, and these young men find themselves among other great Americans including Neil Armstrong and Gerald Ford. I look forward to these Scouts going on to do great things as well.

I am proud to join the friends and family of these proud Scouts in congratulating them on their many and most recent accomplishments.●

AWARD FOR EXCELLENCE IN EDUCATION

● Mr. DAYTON. Mr. President, I rise today to honor Bamber Valley Elementary School, in Rochester, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Bamber Valley Elementary School is truly a model of educational success. The school is Rochester's largest elementary school, serving 885 students in kindergarten through fifth grade. The successful partnership created between families and the community has made possible a school that exemplifies teamwork, pride, and excellence.

Bamber Valley is making full use of test score data to improve teaching techniques and to address the specific reading and math challenges facing individual students. The administration's quick dissemination of test data to the classroom teachers has allowed the teachers to adjust their teaching strategies, addressing the skills that students found to be the most difficult on the standardized tests.

Bamber Valley is home to the district's programs serving the elementary deaf and hard-of-hearing children. The program's resource teachers work with families encountering crisis situations, and a gifted and talented specialist is assigned to the school to help challenge students who excel.

For students in the first through fifth grades, the school has an afterschool academy program, where laughter and high energy combine to create a learning environment that is safe, welcoming, and fun.

Much of the credit for Bamber Valley Elementary School's success belongs to its principal, Ms. Becky Gerdes, and her dedicated teachers. The students and staff at Bamber Valley Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also offer a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Bamber Valley Elementary School should be very proud of their accomplishments.

I congratulate Bamber Valley Elementary School in Rochester, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

AWARD FOR EXCELLENCE IN EDUCATION

● Mr. DAYTON. Mr. President, I rise today to honor Mayo High School, in Rochester, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Mayo High School is truly a model of educational success. Several years ago, the school established three major goals and developed an action plan to achieve them: No. 1, to improve the graduation rate; No. 2, to address a disproportionate number of suspensions of racial minority students; and No. 3, to improve poor math and reading test scores.

Several key school leaders are largely responsible for the school's attaining these goals.

Ms. Joan Bachman, who chaired the diversity committee, initiated a multiyear plan, working with the community, staff, and students to make Mayo High School a more welcoming place for all students. Through her leadership, the school has won the District's Diversity Award for each of the last 4 years. She also won the Rochester Diversity Council's Educators Award last year.

Ms. Jeri Brown oversees the school's conflict mediation program and trains students in conflict mediation skills. The students who receive conflict mediation training perform nearly 400 mediations per year, achieving a 93-percent success rate.

Mr. Ron Randall, chair of the math department, and Barb Milburn, chair of the English department, have done a superior job in improving the academic performance of all students. Last year, Mayo received the State's Five Star rating in math.

Recognizing that many of the students receiving suspensions for behavioral reasons were the same students who least could afford time away from school, Mayo modified its policies. By focusing on addressing causes of students' poor behavior, Mayo has avoided loss of valuable class time. Consequently, suspension rates have improved, and graduation rates have dramatically risen. Last year, the school boasted a 95-percent graduation rate.

Much of the credit for Mayo High School's success belongs to its principal, Dr. John Frederikson, and his dedicated teachers. The students and staff at Mayo High School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of the faculty, staff, and students at Mayo High School should be very proud of their accomplishments.

I congratulate Mayo High School in Rochester, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

AWARD FOR EXCELLENCE IN EDUCATION

● Mr. DAYTON. Mr. President, I rise today to honor Eagle Lake Elementary School, in Eagle Lake, MN, which recently earned an Award for Excellence in Education for its exceptional and innovative achievements in educating children.

Eagle Lake Elementary School is truly a model of educational success, having earned a Five Star rating from the Minnesota Department of Education. The school, which is part of the Mankato Area School District, serves 290 students from the communities of Eagle Lake and Madison Lake. Although relatively small, Eagle Lake Elementary offers an impressive variety of educational opportunities, including all-day kindergarten, special education services, assurance of mastery program for at-risk students, a school psychologist and social worker, a structured study center, afterschool academic assistance, speech and language assistance, an artist-in-residence program, mentoring program, lyceum programs, and challenging opportunities for highly capable students.

Eagle Lake Elementary's ''400 Club,'' a school-wide home reading program, encourages students to spend at least 100 minutes per week reading. At the end of each month, a school-wide celebration honors those who have read over 400 minutes for the month. The ''Reading Buddies'' program pairs early elementary students with fourth and fifth grade students to explore reading through weekly themed projects and activities. The older buddy learns role model and leadership skills while the younger buddy is encouraged to develop lifelong reading habits. The school also boasts an orchestra program, a science fair, a Quiz Bowl, Peace Makers, which teaches peer mediation and conflict resolution, novel study, word masters, art masterpiece, geography and spelling bees, Jump Rope for Heart, and a variety of afterschool activities.

Parents' involvement in the education of their children is also very high at Eagle Lake Elementary. This fall, 99 percent of all parents participated in parent-teacher conferences.

Much of the credit for Eagle Lake Elementary School's success belongs to principal, Jason Scherber, and his dedicated teachers. The students and staff at Eagle Lake Elementary School understand that, in order to be successful, a school must go beyond achieving academic success; it must also provide a nurturing environment where students develop the knowledge, skills, and attitudes for a lifetime of success. All of

the faculty, staff, and students at Eagle Lake Elementary School should be very proud of their accomplishments.

I congratulate Eagle Lake Elementary School in Eagle Lake, MN, for winning the Award for Excellence in Education and for its exceptional contributions to education in Minnesota.●

HAPPY 90TH BIRTHDAY TO RAYMOND TWOMEY

● Mr. KERRY. Mr. President, I rise today to celebrate a special occasion in the life of a true American; Mr. Raymond Twomey of Boston, MA. As Ray gathers with his friends and family, I wish to join with all of them in celebrating his career of public service, his distinguished military service, and his 90th birthday.

Ray was born on January 30, 1916, and grew up in east Boston, where he resides to this day with his son Jerry and daughter-in-law Sandra. He answered his country's call to service in World War II and worked as a medic in the ''Spearhead Division,'' known outside the service by its more formal title of the U.S. Army 703rd Tank Destroyer Battalion, 3rd Armored Division. He ascended to the rank of corporal, fought courageously in the critical Battle of the Bulge, and was subsequently awarded a Purple Heart.

Upon his return to the States, Ray began his work for the U.S. Postal Service and served the Boston neighborhoods of Beacon Hill and the North End. He married the lovely Marie Louise Spinazola, also of east Boston, in 1948; and their four children, Jerry, Claudia, Mary and Bernadette were born and raised in east Boston as well. He is the proud grandfather of six grandchildren and one great grandchild.

On the occasion of Ray's 90th birthday, his entire family will gather to honor him and celebrate his life and accomplishments. I am proud to join them in wishing happy birthday to Ray and wish him the very best.●

HONORING THE LIFE OF CHARLES F. CUMMINGS

● Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to Charles F. Cummings, the official historian of Newark, NJ. Mr. Cummings passed away on December 21, 2005, at the age of 68.

Mr. Cummings was born in Puerto Rico and raised in Virginia, but it was Newark, NJ, to which he pledged his life's work. With a master's degree in American History from Vanderbilt University, Mr. Cummings arrived in New Jersey in 1963 to begin a job with the Newark Public Library. He adapted quickly to his new home, studying the history and traditions of both the city and the State. Before long, Mr. Cummings was renowned for having an encyclopedic knowledge of all things New Jersey.

Not content to keep this information to himself, Mr. Cummings sought to make the State's history public knowledge so that the people of Newark would love his adopted home as much as he did. As an employee of the Newark Public Library for over 40 years, Mr. Cummings took pride in curating public exhibitions that shed light on the history of Newark and brought to life the stories of those who lived there. Mr. Cummings shared the history and accomplishments of Newark with thousands of New Jersey residents by conducting walking tours of the city and writing a regular column for the The Star Ledger of New Jersey called ''Knowing Newark.'' He also served as an affiliate member of the Rutgers University Federated Department of history, where he taught a popular undergraduate course on the history of Newark.

There has hardly been a person, past or present, who has cared about the history of Newark the way Mr. Cummings did. He was an indispensable resource for journalists, historians, and citizens alike. While Mr. Cummings will be missed by the people of New Jersey, he will be forever cherished as a loyal friend, a great man, and a true Newark treasure.

Mr. President, I ask my colleagues to join me in paying tribute to Charles F. Cummings and the immeasurable contributions he has made to the city of Newark and the State of New Jersey.●

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5391. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the completion of a feasibility study of inland navigation improvements for the Chickamauga Lock and Dam, Tennessee; to the Committee on Environment and Public Works.

EC–5392. A communication from the Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a draft bill entitled ''District of Columbia Snow Removal Amendment Act''; to the Committee on Environment and Public Works.

EC–5393. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's monthly report on the status of its licensing and regulatory duties; to the Committee on Environment and Public Works.

EC–5394. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; Update of Materials Incorporated by a Reference'' (FRL No. 8021–7) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5395. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions to Meet Phase II of the Nitrogen Oxides (NO_X) SIP Call'' (FRL No. 8020–4) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5396. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes in FY 2006; Request for Proposals from Indian Tribes for Competitive Grants under Clean Water Act Section 319 in FY 2006 (CFDA 66.460—Nonpoint Source Implementation Grants; Funding Opportunity Number EPA–OW–OWOW–0602)'' (FRL No. 8021–6) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5397. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Beaches Environmental Assessment and Coastal Health Act'' (FRL No. 8020–3) received on January 16, 2006; to the Committee on Environment and Public Works.

EC–5398. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions; Volatile Organic Compound Control for Facilities in the Dallas/Fort Worth Ozone Nonattainment Area'' (FRL No. 8022–2) received on January 18, 2006; to the Committee on Environment and Public Works.

EC–5399. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Ohio: Final Authorization of State Hazardous Waste Management Program Revision'' (FRL No. 8023–3) received on January 18, 2006; to the Committee on Environment and Public Works.

EC–5400. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Jersey Consumer Products Rules'' (FRL No . 8020) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5401. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation Plans; New Mexico, Visibility'' (FRL No. 8025–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5402. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Disapproval of Air Quality Implementation Plans; Montana; Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants'' (FRL No. 8026–1) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5403. A communication from the Principal Deputy Associate Administrator, Office

of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; Direct Final Rule'' (FRL No. 8012–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5404. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; New Source Performance Standards for Montana; Final Rule'' (FRL No. 8012–9) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5405. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Christian County, Kentucky, Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment for Ozone'' (FRL No. 8023–8) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5406. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Tennessee; Nashville Area Second 10-Year Maintenance Plan for the 1-Hour Ozone National Ambient Air Quality Standard; Correction'' (FRL No. 8023–5) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5407. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Implementation Plans; Oregon; Portland Carbon Monoxide Second 10-Year Maintenance Plan'' (FRL No. 8015–3) received on January 25 , 2006; to the Committee on Environment and Public Works.

EC–5408. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection'' (FRL No. 8010–2) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5409. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards'' (FRL No. 8011–1) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5410. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Maine: Determination of Adequacy for the State Municipal Solid Waste Landfill Permit Program'' (FRL No. 8024–2) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5411. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Contaminated Sediment Remediation Guidance for Hazardous Waste Sites'' (http://www.epa.gov/superfund/resources/sediment) received on January 25, 2006; to the Committee on Environment and Public Works.

EC–5412. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting; Approval of Tungsten-Iron-Copper-Nickel, Iron-Tungsten-Nickel Alloy, and Tungsten-Bronze (Additional Formulation), and Tungsten-Tin-Iron Shot Types as Nontoxic for Hunting Waterfowl and Coots; Availability of Environmental Assessments'' (RIN5412–AT87) received on January 26, 2005; to the Committee on Environment and Public Works.

EC–5413. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Thymol; Exemption from the Requirement of a Tolerance'' (FRL No. 7754–9) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5414. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Brucellosis in Cattle; State and Area Classifications; Idaho'' (Doc. No. 06–001–1) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5415. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2005–2006 Crop Year for Tart Cherries'' (Docket No. FV05–930–1 FR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5416. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005–2006 Marketing Year'' (Docket No. FV06–982–1 IFR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5417. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Upper Midwest Marketing Area—Final Order'' (Docket No. AO–361–A39; DA–04–03–A) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5418. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2005–2006 Marketing Year'' (Docket No. FV05–985–2 IFR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5419. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Walnuts Grown in California; Increased Assessment Rate'' (Docket No. FV05–984–2 FR) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5420. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Addition of Chile to the List of Countries Eligible to Export Meat and Meat Products to the United States'' (RIN0583–AD16) received on January 18, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5421. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pesticides; Emergency Exemption Process Revisions'' (FRL No. 7749–3) received on January 25, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5422. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Sorbitol Octanoate; Exemption from the Requirement of a Tolerance'' (FRL No. 7757–2) received on January 25, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5423. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Standards of Performance for Stationary Gas Turbines'' (FRL No. 8025–9) received on January 25, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5424. A communication from the Secretary, Department of Agriculture, transmitting, pursuant to law, the Fiscal Year 2004 Status Report to Congress for the Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5425. A communication from the Chairman, Medicare Payment Advisory Commission, transmitting, pursuant to law, a report entitled ''Home Health Agency Case Mix and Financial Performance''; to the Committee on Finance.

EC–5426. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''January—March 2006 Bond Factor Amounts'' (Rev. Rul. 2006–5) received on January 18, 2006; to the Committee on Finance.

EC–5427. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Determination of Basis of Stock and Securities; Treatment of Excess Loss Accounts'' ((RIN1545–BC05, RIN1545–BE88) (TD9244)) received on January 26, 2006; to the Committee on Finance.

EC–5428. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reporting Requirements for Widely Held Fixed Investment Trusts'' ((RIN1545–BA83) (TD9241)) received on January 26, 2006; to the Committee on Finance.

EC–5429. A communication from the Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the

Treasury, transmitting, pursuant to law, the report of a rule entitled ''Statutory Mergers and Consolidations'' (RIN1545–BA06, RIN1545–BD76) (TD9242)) received on January 26, 2006; to the Committee on Finance.

EC–5430. A communication from the Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled ''Low- and Medium-Voltage Diesel-Powered Electrical Generators'' (RIN1219–AA98) received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–5431. A communication from the Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, transmitting, pursuant to law, the report of a rule entitled ''Training Standards for Shaft and Slope Construction Workers at Underground Mines and Surface Areas of Underground Mines'' (RIN1219–AB35) received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–5432. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans'' (29 CFR Parts 4011 and 4022) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5433. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Allocation of Assets in Single-Employer Plans, Valuation of Benefits and Assets; Expected Retirement Age'' (29 CFR Part 4044) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5434. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease'' (Docket No. 2004P–0512) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5435. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals; Withdrawal'' (Docket No. 2003N–0346) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5436. A communication from the Regulations Coordinator, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' ((RIN0910–AA94) (Docket No. 2000N–1269)) received on January 25, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–5437. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled ''Cosponsorships, Fee and Non-Fee Based SBA-Sponsored Activities, and Gifts'' (RIN3245–AF37) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5438. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled ''Small Business Size Standards, Inflation Adjustment to Size Standards; Business Loan Program; Disaster Assistance Loan Program'' (RIN3245–AF41) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5439. A communication from the Deputy General Counsel, Office of Strategic Alliances, Small Business Administration, transmitting, pursuant to law, the report of a rule entitled ''Small Business Technology Transfer Program Policy Directive'' (RIN3245–AE96) received on January 25, 2006; to the Committee on Small Business and Entrepreneurship.

EC–5440. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a Program Acquisition Unit Cost (PAUC) and Acquisition Procurement Unit Cost (APUC) breach relative to the National Polar-orbiting Operational Environmental Satellite System; to the Committee on Armed Services.

EC–5441. A communication from the Assistant Secretary of Defense (Health Affairs), transmitting, pursuant to law, a report entitled ''Fiscal Year 2005 Report on Medical Informatics''; to the Committee on Armed Services.

EC–5442. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's Inspector General Semiannual Report for the period from April 1, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5443. A communication from the Acting Chief of Staff, Federal Mediation and Conciliation Service, transmitting, pursuant to law, the report of the Federal Mediation and Conciliation Service under the Federal Managers' Financial Integrity Act for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5444. A communication from the Director of Administration, National Labor Relations Board, transmitting, pursuant to law, the Board's Competitive Sourcing Activities Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5445. A communication from the Chairman, Broadcasting Board of Governors, transmitting, pursuant to law, the Board's Semiannual Report of the Office of the Inspector General for the period of April 1, 2005 through September 30, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–5446. A communication from the Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Circular 2005–08'' (FAC Case 2005–08) received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5447. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Examining System'' (RIN3206–AK35) received on January 25, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5448. A communication from the Director, Strategic Human Resources Policy Division, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems; Change in the Survey Cycle for the Harrison, Mississippi, Nonappropriated Fund Federal Wage System Wage Area'' (RIN3206–AK96) received on January 26, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–5449. A message from the President of the United States, transmitting, pursuant to law, the report of the continuation of the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process; to the Committee on Banking, Housing, and Urban Affairs.

EC–5450. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to Liberia that was declared in Executive Order 13348 of July 22, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–5451. A communication from the Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Efforts Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–5452. A communication from the Associate General Counsel for Legislation and Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities'' ((RIN2506–AC04)(FR–4556–I–02)) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5453. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Economic Sanctions Enforcement Procedures for Banking Institutions'' (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5454. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Partial Withdrawal of the Office of Foreign Assets Control's Proposed Rule Published January 29, 2003, Relating to the Economic Sanctions Enforcement Guidelines'' (31 CFR Part 501) received on January 25, 2006; to the Committee on Banking, Housing, and Urban Affairs.

EC–5455. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department's Fiscal Year 2005 Competitive Sourcing Activity Report; to the Committee on Energy and Natural Resources.

EC–5456. A communication from the Principal Deputy General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Accounting and Financial Reporting for Public Utilities Including RTOs'' (Docket No. RM04–12–000) received on January 25, 2006; to the Committee on Energy and Natural Resources.

EC–5457. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Termination of Federal Enforcement for Parts of the Missouri Permanent Regulatory Program and Return of Full Regulatory Authority to the State of Missouri'' (Docket No. MO–738) received on January 26, 2006; to the Committee on Energy and Natural Resources.

EC–5458. A communication from the Acting Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Iowa Regulatory Program'' (Docket No. IA–015–FOR) received on January 26, 2006; to the Committee on Energy and Natural Resources.

EC–5459. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the

Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 06–01–06–08); to the Committee on Foreign Relations.

EC–5460. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the International Traffic in Arms Regulations: Registration Fee Change'' (RIN 1400–AB97) received on January 25, 2006; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DEMINT:

S. 2207. A bill to extend the temporary suspension of duty on certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2208. A bill to suspend temporarily the duty on para-Chlorophenol; to the Committee on Finance.

By Mr. DEMINT:

S. 2209. A bill to suspend temporarily the duty on 4-Chloro-3-[[3-(4-methoxyphenyl)-1,3-dioxopropyl]-amino]-do decyl ester; to the Committee on Finance.

By Mr. DEMINT:

S. 2210. A bill to extend the temporary suspension of duty on 2,6 Dichlorotoluene; to the Committee on Finance.

By Mr. DEMINT:

S. 2211. A bill to extend the temporary suspension of duty on Fluorobenzene; to the Committee on Finance.

By Mr. DEMINT:

S. 2212. A bill to suspend temporarily the duty on Diresul Brown GN Liquid Crude; to the Committee on Finance.

By Mr. DEMINT:

S. 2213. A bill to extend the suspension of duty on sulfur black 1; to the Committee on Finance.

By Mr. DEMINT:

S. 2214. A bill to extend the suspension of duty on reduced vat blue 43; to the Committee on Finance.

By Mr. DEMINT:

S. 2215. A bill to suspend temporarily the duty on Sulfur Blue 7; to the Committee on Finance.

By Mr. DEMINT:

S. 2216. A bill to suspend temporarily the duty on 1,4-Benzendicarboxylic Acid, Polymer With N,N-Bis(2-Aminoethyl)-1,2-Ethanediamine, Cyclized, Me Sulfates; to the Committee on Finance.

By Mr. DEMINT:

S. 2217. A bill to suspend temporarily the duty on Aniline 2 .5 Di-sulphonic Acid; to the Committee on Finance.

By Mr. DEMINT:

S. 2218. A bill to extend the temporary suspension of duty on certain sawing machines; to the Committee on Finance.

By Mr. DEMINT:

S. 2219. A bill to extend the temporary suspension of duty on certain sector mold press machines; to the Committee on Finance.

By Mr. DEMINT:

S. 2220. A bill to extend the temporary suspension of duty on certain manufacturing equipment for molding; to the Committee on Finance.

By Mr. DEMINT:

S. 2221. A bill to extend the temporary suspension of duty on certain extruders used in the production of radial tires; to the Committee on Finance.

By Mr. DEMINT:

S. 2222. A bill to provide for the liquidation or reliquidation of entries of certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2223. A bill to extend the temporary suspension of duty on certain manufacturing equipment used for working iron or steel; to the Committee on Finance.

By Mr. DEMINT:

S. 2224. A bill to provide for the liquidation or reliquidation of entries of certain mold press machines; to the Committee on Finance.

By Mr. DEMINT:

S. 2225. A bill to provide for the liquidation or reliquidation of entries of certain manufacturing equipment; to the Committee on Finance.

By Mr. DEMINT:

S. 2226. A bill to provide for the liquidation or reliquidation of entries of certain manufacturing equipment; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. JOHNSON (for himself and Mr. THUNE):

S. Res. 358. A resolution expressing the sense of the Senate that the Secretary of Health and Human Services, acting through the Director of Indian Health Service, should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a new report that accurately describes the current conditions at the Wagner Service Unit; to the Committee on Indian Affairs.

ADDITIONAL COSPONSORS

S. 521

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 521, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 602

At the request of Ms. MIKULSKI, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 602, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 707

At the request of Mr. ALEXANDER, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 707, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 967

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 967, a bill to amend the Communications Act of 1934 to ensure that prepackaged news stories contain announcements that inform viewers that the information within was provided by the United States Government, and for other purposes.

S. 1172

At the request of Mr. SPECTER, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1800

At the request of Ms. SNOWE, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1934

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 2012

At the request of Mr. STEVENS, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 2012, a bill to authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, and for other purposes.

S. 2025

At the request of Mr. BAYH, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 2025, a bill to promote the national security and stability of the United States economy by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes.

S. 2154

At the request of Mr. OBAMA, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2154, a bill to provide for the issuance of a commemorative postage stamp in honor of Rosa Parks.

S. 2172

At the request of Ms. LANDRIEU, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2172, a bill to provide for response to Hurricane Katrina by establishing a Louisiana Recovery Corporation, providing for housing and community rebuilding, and for other purposes.

S. 2179

At the request of Mr. OBAMA, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2179, a bill to require openness in conference committee deliberations and full disclosure of the contents of conference reports and all other legislation.

S. 2197

At the request of Mr. ALEXANDER, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. SNOWE), the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 2197, a bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

At the request of Mr. FRIST, his name was added as a cosponsor of S. 2197, supra.

At the request of Mr. DOMENICI, the names of the Senator from New York (Mr. SCHUMER), the Senator from North Dakota (Mr. DORGAN), the Senator from Maryland (Mr. SARBANES) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2197, supra.

S. 2198

At the request of Mr. ALEXANDER, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. SNOWE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 2198, a bill to ensure the United States successfully competes in the 21st century global economy.

At the request of Mr. FRIST, his name was added as a cosponsor of S. 2198, supra.

At the request of Mr. DOMENICI, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2198, supra.

S. 2199

At the request of Mr. ALEXANDER, the names of the Senator from New Jersey (Mr. LAUTENBERG), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. SNOWE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 2199, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education.

At the request of Mr. FRIST, his name was added as a cosponsor of S. 2199, supra.

At the request of Mr. DOMENICI, the names of the Senator from New York (Mr. SCHUMER), the Senator from Maryland (Mr. SARBANES) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 2199, supra.

S. 2201

At the request of Mr. OBAMA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2205

At the request of Mr. THUNE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2205, a bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes.

S. CON. RES. 78

At the request of Mr. ISAKSON, his name was added as a cosponsor of S. Con. Res. 78, a concurrent resolution condemning the Government of Iran for violating its international nuclear nonproliferation obligations and expressing support for efforts to report Iran to the United Nations Security Counsel.

S. RES. 182

At the request of Mr. COLEMAN, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. Res. 182, a resolution supporting efforts to increase childhood cancer awareness, treatment, and research.

S. RES. 320

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 355

At the request of Mr. NELSON of Nebraska, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Michigan (Ms. STABENOW), the Senator from Maine (Ms. COLLINS), the Senator from Minnesota (Mr. COLEMAN), the Senator from Nebraska (Mr. HAGEL), the Senator from Tennessee (Mr. ALEXANDER), the Senator from Illinois (Mr. OBAMA), the Senator from Delaware (Mr. CARPER), the Senator from Tennessee (Mr. FRIST), the Senator from Nevada (Mr. REID) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. Res. 355, a resolution honoring the service of the National Guard and requesting consultation by the Department of Defense with Congress and the chief executive officers of the States prior to offering proposals to change the National Guard force structure.

S. RES. 357

At the request of Mr. MCCAIN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. Res. 357, a resolution designating January 2006 as ''National Mentoring Month''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 358—EXPRESSING THE SENSE OF THE SENATE THAT THE SECRETARY OF HEALTH AND HUMAN SERVICES, ACTING THROUGH THE DIRECTOR OF INDIAN HEALTH AND HUMAN SEVICES, ACTING THROUGH THE DIRECTOR OF INDIAN HEALTH SERVICE, SHOULD MAINTAIN THE CURRENT OPERATING HOURS OF THE WAGNER SERVICE UNIT UNTIL THE SECRETARY SUBMITS TO CONGRESS A NEW REPORT THAT ACCURATELY DESCRIBES THE CURRENT CONDITIONS AT THE WAGNER SERVICE UNIT

Mr. JOHNSON (for himself and Mr. THUNE) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. RES. 358

Whereas the Senate reaffirms the policy that, as provided in section 3(a) of the Indian Health Care Improvement Act (25 U.S.C. 1602(a)), ''it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.''

Whereas the Senate reaffirms the finding that, as provided in section 2(a) of the Indian Health Care Improvement Act (25 U.S.C. 1601(a)), ''Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people.'';

Whereas the Senate reaffirms the finding that, as provided in section 2(c) of the Indian Health Care Improvement Act (25 U.S.C. 1601(c)), ''Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, Indians.'';

Whereas the Senate reaffirms the finding that, as provided in section 2(d) of the Indian Health Care Improvement Act (25 U.S.C. 1601(d)), ''Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.'';

Whereas the Senate reaffirms the policy, as provided in section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), that—

''(1) Notwithstanding any provision of law other than this subsection, no Service hospital or outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

''(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

''(B) the cost effectiveness of such closure;

''(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

''(D) the availability of contract health care funds to maintain existing levels of service;

''(E) the views of the Indian tribes served by such hospital or facility concerning such closure;

''(F) the level of utilization of such hospital or facility by all eligible Indians; and

''(G) the distance between such hospital or facility and the nearest operating Service hospital.'';

Whereas the Secretary of Health and Human Services, acting through the Director of Indian Health Service, has proposed that the operating hours of the Wagner Service Unit, which serves the Yankton Sioux Tribe and others, should be reduced from 24 hours per day to the hours between 7:00 a.m. and 11:00 p.m.;

Whereas the 1997 proposed closure report, submitted by the Secretary pursuant to section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), is currently out of date and no longer accurately represents the impact of such closure upon eligible Indians at the Wagner Service Unit; and

Whereas, during the previous year, the Santee Sioux Tribe of Nebraska requested health care services formerly provided by the Indian Health Service under the Indian Self-Determination Act (25 U.S.C. 450 et seq.) from another provider, thereby removing ''shares'' from the Wagner Service Unit and creating a budgetary crisis that forced the facility to announce reductions in the operating hours of the emergency room: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) pursuant to section 301(b)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1631(b)(1)), the Secretary of Health and Human Services, acting through the Director of Indian Health Services, should submit to Congress a new report that evaluates the impact of reduction in emergency room services at the Wagner Service Unit of Indian Health Service; and

(2) the Secretary should maintain the current operating hours of the Wagner Service Unit until the Secretary submits to Congress a report described in paragraph (1).

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, January 30, 2006, at 2 p.m., for a hearing titled, ''Hurricane Katrina: Urban Search and Rescue in a Catastrophe.''

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. INHOFE. Mr. President, I request that my fellow, Scott Fisher, be granted floor privileges during the debate tonight and for tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, JANUARY 31, 2006

Mr. INHOFE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, January 31. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to executive session to resume consideration of the nomination of Samuel Alito to the United States Supreme Court as under the provisions of the previous order.

I ask further that the time until 10:20 a.m. be equally divided, with the time from 10:20 to 10:30 under the control of Senator LEAHY and the time from 10:30 to 10:40 under the control of Senator SPECTER, the time from 10:40 to 10:50 under the control of the Democratic leader, and the time from 10:50 to 11 be reserved for the majority leader. I further ask unanimous consent that following the vote on confirmation, the Senate proceed to the consideration of the nomination of Ben Bernanke to be Chairman of the Federal Reserve, as under the previous order.

I further ask unanimous consent that the Senate stand in recess from 12:30 to 2:15 p.m. to accommodate the weekly party luncheons, and that Senator BUNNING be recognized at 2:15 for his 30 minutes of debate on the Bernanke nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. INHOFE. Tomorrow morning at 11 o'clock we will vote on the confirmation of Judge Alito to be an Associate Justice on the Supreme Court. Senators should be seated at their desks for this historic vote. Following that vote, we will consider the nomination of Ben Bernanke to be Chairman of the Federal Reserve under a time agreement reached last week. Tomorrow evening we will proceed as a body to the House Chamber to hear the President's State of the Union Message, which is due to be delivered at 9 o'clock eastern standard time.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. INHOFE. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:44 p.m., adjourned until Tuesday, January 31, 2006, at 9:45 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, January 31, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 1

9:30 a.m.
Indian Affairs
To hold oversight hearings to examine off-reservation gaming issues, focusing on the process for considering gaming applications.
SD–106

Judiciary
To hold hearings to examine consolidation in the energy industry.
SD–226

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine promotion and advancement of women in sports.
SH–216

Homeland Security and Governmental Affairs
To continue hearings to examine Hurricane Katrina response issues, focusing on managing the crisis and evacuating New Orleans.
SD–342

2 p.m.
Judiciary
Constitution, Civil Rights and Property Rights Subcommittee
To hold hearings to examine the death penalty in the United States.
SD–226

2:30 p.m.
Intelligence
To receive a closed briefing regarding intelligence matters.
SH–219

FEBRUARY 2

9:30 a.m.
Foreign Relations
To hold hearings to examine Convention between the Government of the United States of America and the Government of Bangladesh for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Dhaka on September 26, 2004 with an exchange of notes enclosed (Treaty Doc. 109–5), Protocol Amending the Convention Between the Government of the United States of America and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Paris on August 31, 1994 (Treaty Doc. 109–4), Protocol Amending the Convention Between the United States of America and the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritances, and Gifts signed at Washington on November 24, 1978 (Treaty Doc. 109–7), and Protocol Amending the Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington on September 30, 2005 (Treaty Doc. 109–8).
SD–419

10 a.m.
Banking, Housing, and Urban Affairs
To resume hearings to examine proposals to reform the National Flood Insurance Program.
SD–538

Budget
To hold hearings to examine the CBO budget and economic outlook.
SD–608

Homeland Security and Governmental Affairs
To continue hearings to examine Hurricane Katrina response issues, focusing on the role of the Governors in managing the catastrophe.
SD–342

Intelligence
To hold hearings to examine the world threat.
SD–106

Aging
To hold hearings to examine meeting the challenges of Medicare Drug Benefit Implementation.
SH–216

10:30 a.m.
Veterans' Affairs
To hold hearings to examine ''The Jobs for Veterans Act Three Years Later: Are VETS' Employment Programs Working for Veterans?''.
SR–418

2 p.m.
Judiciary
To hold hearings to examine pending nominations.
SD–226

2:30 p.m.
Foreign Relations
To hold hearings to examine the nominations of Gary A. Grappo, of Virginia, to be Ambassador to the Sultanate of Oman, and Patricia A. Butenis, of Virginia, to be Ambassador to the People's Republic of Bangladesh.
SD–419

Intelligence
To hold closed hearings to examine intelligence matters.
SH–219

FEBRUARY 3

9:30 a.m.
Joint Economic Committee
To hold hearings to examine the employment-unemployment situation for January 2006.
2212 RHOB

FEBRUARY 6

9:30 a.m.
Judiciary
To hold hearings to examine wartime executive power and the NSA's surveillance authority.
Room to be announced

2 p.m.
Homeland Security and Governmental Affairs
To resume hearings to examine Hurricane Katrina response issues, focusing on managing law enforcement and communications in a catastrophe.
SD–342

FEBRUARY 7

9:30 a.m.
Armed Services
To hold hearings to examine the defense authorization request for fiscal year 2007 and the future years defense program.
SD–106

FEBRUARY 8

10 a.m.
Finance
To hold hearings to examine implementation of the new Medicare drug benefit.
SD–215

Commerce, Science, and Transportation
National Ocean Policy Study Subcommittee
To hold hearings to examine S. 1215, to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.
SD–562

2:30 p.m.
Commerce, Science, and Transportation
Consumer Affairs, Product Safety, and Insurance Subcommittee
To hold hearings to examine protecting consumers' phone records.
SD–562

FEBRUARY 9

10 a.m.
Commerce, Science, and Transportation
To hold an oversight hearing to examine commercial aviation security, focusing on Transportation Security Administration's aviation passenger screening programs, Secure Flight and Registered Traveler, to discuss issues that have prevented these programs from being launched, and to determine their future.
SD–562

Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Energy.
SD–366

Finance
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Health and Human Services.
SD–215

2:30 p.m.
Energy and Natural Resources
To hold hearings to examine the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States' energy market.
SD–366

FEBRUARY 14

10 a.m.
Veterans' Affairs
To hold hearings to examine the President's proposed budget request for fiscal year 2007 for the Department of Veterans Affairs.
SR–418

FEBRUARY 15

11 a.m.
Energy and Natural Resources
Business meeting to consider the President's views and estimates to be submitted to the Committee on the Budget.
SD–366

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine developments in nanotechnology.
SD–562

Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations.
SD–366

FEBRUARY 16

9:30 a.m.
Armed Services
To hold hearings to examine priorities and plans for the atomic energy defense activities of the Department of Energy and to review the President's proposed budget request for fiscal year 2007 for atomic energy defense activities of the Department of Energy and the National Nuclear Security Administration.
SD–106

2:30 p.m.
Commerce, Science, and Transportation
To hold hearings to examine NOAA budget.
SD–562

FEBRUARY 28

2 p.m.
Veterans' Affairs
To hold hearings to examine legislative presentation of the Disabled American Veterans.
SD–106

MARCH 1

2:30 p.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine winter storms.
SD–562

MARCH 9

10 a.m.
Commerce, Science, and Transportation
To hold hearings to examine aviation security and the Transportation Security Administration.
SD–562

MARCH 16

10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold hearings to examine impacts on aviation regarding volcanic hazards.
SD–562

MARCH 30

10 a.m.
Commerce, Science, and Transportation
Disaster Prevention and Prediction Subcommittee
To hold an oversight hearing to examine National Polar-Orbiting Operational Environmental Satellite System.
SD–562

CANCELLATIONS

FEBRUARY 2

9:30 a.m.
Judiciary
Business meeting to consider pending calendar business.
SD–226

POSTPONEMENTS

FEBRUARY 9

2:30 p.m.
Commerce, Science, and Transportation
To continue oversight hearings to examine commercial aviation security, focusing on physical screening of airline passengers, including issues pertaining to Transportation Security Administration's Federal passenger screener force, TSA procurement policy, air cargo screening, and the deployment of explosive detection technology.
SD–562

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S259–S331

Measures Introduced: Twenty bills and one resolution were introduced, as follows: S. 2207–2226; and S. Res. 358. **Page S329**

Supreme Court Nomination: Senate resumed consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States. **Pages S260–S323**

A unanimous-consent-time agreement was reached providing for further consideration of the nomination at 9:45 a.m., on Tuesday, January 31, 2006; that the time until 11 a.m. be under the control of certain Members; further, that at 11 a.m. Senate vote on confirmation of the nomination. **Page S331**

During consideration of this measure today, Senate also took the following action:

By 72 yeas to 25 nays (Vote No. 1), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the nomination. **Page S308**

Bernanke Nomination—Agreement: A unanimous-consent agreement was reached providing that following the vote on the nomination of Samuel A. Alito (listed above), on Tuesday, January 31, 2006, Senate begin consideration of the nominations of Ben S. Bernanke, of New Jersey, to be a Member and to be Chairman, of the Board of Governors of the Federal Reserve System; that at 2:15 p.m., Senator Bunning be recognized for 30 minutes, and 60 minutes equally divided between the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs; and that following the use, or yielding back, of time, the Senate vote on confirmation of the nominations. **Page S331**

Executive Communications: **Pages S326–29**

Additional Cosponsors: **Pages S329–30**

Statements on Introduced Bills/Resolutions: **Pages S330–31**

Additional Statements: **Pages S324–26**

Authorities for Committees to Meet: **Page S331**

Privileges of the Floor: **Page S331**

Record Votes: One record vote was taken today. (Total—1) **Page S308**

Adjournment: Senate convened at 10 a.m., and adjourned at 7:44 p.m., until 9:45 a.m., on Tuesday, January 31, 2006. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S331.)

Committee Meetings

(Committees not listed did not meet)

HURRICANE KATRINA

Committee on Homeland Security and Governmental Affairs: Committee continued hearings to examine Hurricane Katrina response issues, focusing on urban search and rescue during a catastrophe, receiving testimony from William M. Lokey, Operations Branch Chief, Response Division, Federal Emergency Management Agency, Department of Homeland Security; Brigadier General Brod Veillon, Louisiana National Guard, Jackson; Lieutenant Colonel Keith LaCaze, Louisiana Department of Wildlife, Baton Rouge; and Timothy P. Bayard, New Orleans Police Department, New Orleans, Louisiana.

Committee will meet again on Tuesday, January 31, 2006.

House of Representatives

Chamber Action

The House was not in session today. The House is scheduled to meet at 12 noon on Tuesday, January 31, 2006.

Committee Meetings

No committee meetings were held.

COMMITTEE MEETINGS FOR TUESDAY, JANUARY 31, 2006

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, to hold hearings to examine pandemic influenza preparedness at Federal, State and Local levels, 8:30 a.m., SH–216.

Committee on Commerce, Science, and Transportation: to continue hearings to examine video content, 2:30 p.m., SD–562.

Committee on Foreign Relations: to hold hearings to examine the nominations of Kristie A. Kenney, of Virginia, to be Ambassador to the Republic of the Philippines, and Michael W. Michalak, of Michigan, for the rank of Ambassador during his tenure of service as United States Senior Official to the Asia-Pacific Economic Cooperation Forum, 2:30 p.m., SD–419.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine the nominations of Edwin G. Foulke, Jr., of South Carolina, to be an Assistant Secretary of Labor, and Richard Stickler, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health, 2 p.m., SD–106.

Committee on Homeland Security and Governmental Affairs: to continue hearings to examine Hurricane Katrina response issues, focusing on the challenges during a catastrophe, including the evacuation of New Orleans in advance of Hurricane Katrina, 10 a.m., SD–342.

House

Committee on Rules, to consider the following: a resolution agreeing to the Senate Amendment for S. 1932, Deficit Reduction Act of 2005; a measure to amend the USA PATRIOT Act to extend the sunset of certain provisions of such Act; and a resolution to eliminate floor privileges and access to Member exercise facilities for registered lobbyists who are Former Members or Officers of the House, 1 p.m., H–313 Capitol.

Next Meeting of the **SENATE**

9:45 a.m., Tuesday, January 31

Senate Chamber

Program for Tuesday: Senate will continue consideration of the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States, with a vote to occur on confirmation of the nomination at 11 a.m.; following which, Senate will begin consideration of the nominations of Ben S. Bernanke, of New Jersey, to be a Member and to be Chairman, of the Board of Governors of the Federal Reserve System.

(Senate will recess from 12:30 p.m. until 2:15 p.m. for their respective party conferences.)

(At approximately 8:40 p.m., Senate will proceed as a body to the House Chamber for a joint session to receive the State of the Union Address by the President of the United States.)

Next Meeting of the **HOUSE OF REPRESENTATIVES**

12 noon, Tuesday, January 31

House Chamber

Program for Tuesday: To be announced.

Congressional Record

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